

ATTACHMENT 76

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

1

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS		
ANTITRUST LITIGATION		MDL NO. 2002
		08-md-02002
THIS DOCUMENT RELATES TO		
Publix Super Markets, Inc. v.		HIGHLY
United Egg Producers, et al,		CONFIDENTIAL
No. 2:10-cv-06737-GP		

Thursday, August 29, 2013

9:02 a.m.

Videotaped 30(b)(6) deposition of JAMES
WILSON, convened at the offices of Wasilewski
Court Reporting, LLC, 1525 S. Florida Avenue,
Ste. 4, Lakeland, Florida, pursuant to notice,
the proceedings being recorded stenographically
by Rita G. Meyer, RDR, CRR, CBC, CCP, Realtime
Reporter and Notary Public of the State of
Florida, and transcribed under her direction.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 EXHIBITS, con't</p> <p>2 Description PAGE</p> <p>3 Exhibit Wilson 20 PUB_EGGS_007158 - 007182212</p> <p>4 Exhibit Wilson 21 PUB_EGGS_006505 - 006507227</p> <p>5 Exhibit Wilson 22 PUB_EGGS_011786 - 011788230</p> <p>6 Exhibit Wilson 23 PUB_EGGS_011856- 011857234</p> <p>7 Exhibit Wilson 24 PUB_EGGS_011874 - 011877236</p> <p>8 Exhibit Wilson 25 PUB_EGGS_015055 w/attachment ...255</p> <p>9</p> <p>10 -----</p> <p>11</p> <p>12 STIPULATIONS</p> <p>13 It is hereby stipulated and agreed between</p> <p>14 counsel for the respective parties and the witness</p> <p>15 that the reading and signing of the deposition be</p> <p>16 RESERVED.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">8</p> <p>1 witness and Publix Super Markets.</p> <p>2 MR. SCHWINGLER: Is anybody on the line?</p> <p>3 MR. GERMAINE: I heard one person join.</p> <p>4 MS. ALLEN: Yes, This is Karri Allen from</p> <p>5 Porter Wright on behalf of Rose Acre Farms.</p> <p>6 MR. GERMAINE: And for the Record, the</p> <p>7 videographer introduced the deposition as the</p> <p>8 deposition of James Wilson, but we are</p> <p>9 proceeding as a 30(b)6 deposition of Publix</p> <p>10 today.</p> <p>11 MR. SCHWINGLER: Yes. Are we ready?</p> <p>12 (Mr. Rayle enters the deposition)</p> <p>13 MR. SCHWINGLER: One more. Go off the</p> <p>14 Record for two seconds.</p> <p>15 THE VIDEOGRAPHER: It's 9:05, we're</p> <p>16 going off the Record.</p> <p>17 (Proceedings recessed at 9:05 a.m.)</p> <p>18 (Proceedings resumed at 9:09 a.m.)</p> <p>19 THE VIDEOGRAPHER: It's 9:09. We're</p> <p>20 back on the Record.</p> <p>21 MR. SCHWINGLER: Mr. Rayle, could you</p> <p>22 note your appearance?</p>
<p style="text-align: right;">7</p> <p>1 THE VIDEOGRAPHER: Good morning. My</p> <p>2 name is Rick Spector, and I'm the</p> <p>3 videographer appearing on behalf of Henderson</p> <p>4 Legal Services, Inc. We're here at the</p> <p>5 office of Wasilewski Court Reporting, LLC,</p> <p>6 1525 South Florida Avenue, Lakeland, Florida.</p> <p>7 This matter is before the United States</p> <p>8 District Court for the Eastern District of</p> <p>9 Pennsylvania in regard to Processed Egg</p> <p>10 Products Antitrust Litigation. The case</p> <p>11 number is MDL 2002 08-md-02002.</p> <p>12 This is the deposition of James Wilson.</p> <p>13 Today is Thursday, August 29th, 2013 and the</p> <p>14 time is 9:04 in the morning. At this time,</p> <p>15 I'll ask the attorneys to please introduce</p> <p>16 themselves, stating the parties whom they</p> <p>17 represent.</p> <p>18 MR. SCHWINGLER: Peter Schwingler on</p> <p>19 behalf of Defendant Michael Foods.</p> <p>20 MR. GERMAINE: David Germaine on behalf</p> <p>21 of the witness and Publix Super Markets.</p> <p>22 MR. BJORK: John Bjork on behalf of the</p>	<p style="text-align: right;">9</p> <p>1 MR. RAYLE: Merrick Rayle for the</p> <p>2 Indirect Purchaser Plaintiffs.</p> <p>3 MR. SCHWINGLER: Okay.</p> <p>4 JAMES WILSON,</p> <p>5 having been first duly sworn, testified as</p> <p>6 follows:</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MR. SCHWINGLER:</p> <p>9 Q. Mr. Wilson, my name is Pete Schwingler.</p> <p>10 I represent Michael Foods, which is a Defendant in</p> <p>11 this lawsuit.</p> <p>12 Could you state and spell your name for</p> <p>13 the Record, please?</p> <p>14 A. James Wilson. J-A-M-E-S. W-I-L-S-O-N.</p> <p>15 Q. Could you describe your educational</p> <p>16 background, starting with high school?</p> <p>17 A. I have a high school diploma, 12th</p> <p>18 grade, and then my AA degree from Tallahassee</p> <p>19 Community College.</p> <p>20 Q. Have you ever had your deposition taken</p> <p>21 before?</p> <p>22 A. One time before.</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

4 (Pages 10 to 13)

<p style="text-align: right;">10</p> <p>1 Q. What was the subject matter of that 2 deposition?</p> <p>3 A. Slip and fall.</p> <p>4 Q. I'll just go over some background, even 5 though you've done this once before. The most 6 important thing is that you listen carefully to my 7 questions and answer truthfully. If you don't 8 understand my question or if you can't hear me, 9 please let me know and I'll either try to rephrase 10 or we'll have the court reporter read the question 11 back to you. But if you answer my questions, I'm 12 going to assume that you heard me and understood 13 the questions. Is that fair?</p> <p>14 A. Yes, sir.</p> <p>15 Q. It's important for the court reporter's 16 benefit that only one of us speak at a time so 17 we're not speaking over each other. And it's also 18 important that you answer the questions audibly 19 with words like yes or no, rather than mm-hmm or 20 uhn-uhn.</p> <p>21 If you need a break, just let me know 22 and we'll take a break. The only exception is</p>	<p style="text-align: right;">12</p> <p>1 Q. Beer. What are your job 2 responsibilities in your current position?</p> <p>3 A. That's a very broad question. I mean, I 4 have --</p> <p>5 Q. What would you do on a typical day in 6 your current position?</p> <p>7 A. Talk to people. I mean, it's a very 8 broad question. I have many, many, many 9 responsibilities as a buyer.</p> <p>10 Q. Would part of your responsibilities 11 include communicating with suppliers?</p> <p>12 A. Yes.</p> <p>13 Q. And would your responsibilities include 14 communicating with others within Publix about the 15 product that you are considering?</p> <p>16 A. Yes.</p> <p>17 Q. How long have you had your current 18 title?</p> <p>19 A. I've been a buyer since 2007.</p> <p>20 Q. Have you been a buyer with respect to 21 beer since 2007?</p> <p>22 A. No.</p>
<p style="text-align: right;">11</p> <p>1 that we try not to break while a question is 2 pending. Who will be voicing objections?</p> <p>3 MR. GERMAINE: I will.</p> <p>4 BY MR. SCHWINGLER:</p> <p>5 Q. Mr. Germaine may voice an objection from 6 time to time. Unless he instructs not to answer, 7 then you should answer the question unless I 8 withdraw it.</p> <p>9 And the most important thing is that you 10 listen carefully and answer truthfully. Is there 11 any reason you can't do that today?</p> <p>12 A. No.</p> <p>13 Q. Mr. Wilson, who is your current 14 employer?</p> <p>15 A. Publix Super Markets.</p> <p>16 Q. How long have you been worked for 17 Publix?</p> <p>18 A. Twenty-five years.</p> <p>19 Q. What is your current title?</p> <p>20 A. Buyer.</p> <p>21 Q. And what, what is it that you buy?</p> <p>22 A. Currently, beer.</p>	<p style="text-align: right;">13</p> <p>1 Q. Since 2007, what products have you 2 been -- for what products have you served as a 3 buyer?</p> <p>4 A. Eggs, butters, biscuits, the 5 refrigerated biscuit. Dough, cream cheese, 6 refrigerated desserts.</p> <p>7 Q. During what period did you serve as the 8 buyer for eggs?</p> <p>9 A. From 2007 until, um, February of this 10 year.</p> <p>11 Q. When you say eggs, does that include 12 shell eggs?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Does that also include refrigerated egg 15 substitutes such as Egg Beaters?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Are you aware that Publix has filed a 18 lawsuit against a number of entities, including 19 the United Egg Producers, United States Egg 20 Marketers and a number of egg producers?</p> <p>21 A. According to the documents, yes, sir.</p> <p>22 Q. What is your understanding of the</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 allegations in the lawsuit?</p> <p>2 A. That the United Egg Producers, the UEP,</p> <p>3 formed an alliance to, um, hinder the production</p> <p>4 of eggs.</p> <p>5 MR. SCHWINGLER: This would be Exhibit</p> <p>6 1. This will be Wilson Exhibit 1.</p> <p>7 (Wilson 1 Received and Marked)</p> <p>8 BY MR. SCHWINGLER:</p> <p>9 Q. Mr. Wilson, I'm showing you what has</p> <p>10 been marked as Wilson Exhibit 1. Have you seen</p> <p>11 this document before?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What is this document?</p> <p>14 A. It is the Defendant's notice of</p> <p>15 Deposition to Plaintiff Publix Super Markets,</p> <p>16 Incorporated, pursuant to Federal RCP 30(b)6.</p> <p>17 Q. If you flip to page 9, the bottom of</p> <p>18 page 9, do you see where it says "deposition</p> <p>19 topics"?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Have you reviewed the, I believe, 30</p> <p>22 numbered deposition topics that, that follow that</p>	<p style="text-align: right;">16</p> <p>1 A. No, sir.</p> <p>2 Q. And will you be testifying about the</p> <p>3 manufacturing business unit?</p> <p>4 A. No, sir.</p> <p>5 Q. So you'll only be testifying about</p> <p>6 grocery; is that correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What did you do to prepare for the</p> <p>9 deposition today?</p> <p>10 A. Met with other people with Publix Super</p> <p>11 Markets on their -- with respect to their</p> <p>12 expertise.</p> <p>13 Q. Who did you meet with?</p> <p>14 A. Maria Brous, James Lucas, Greg Bates,</p> <p>15 Kevin Ralph.</p> <p>16 Q. Starting with Maria Brous, what did you</p> <p>17 speak -- who is Maria Brous?</p> <p>18 A. Maria Brous works for our community</p> <p>19 affairs.</p> <p>20 Q. What is her responsibilities?</p> <p>21 A. She deals with newspapers and community</p> <p>22 affairs issues.</p>
<p style="text-align: right;">15</p> <p>1 heading?</p> <p>2 A. Yes, sir, I think I have.</p> <p>3 Q. And do you understand that you'll be</p> <p>4 testifying on Publix's behalf today on all 30 of</p> <p>5 those topics or at least the 30 that your counsel</p> <p>6 has, through me, conferred in negotiations with</p> <p>7 us, decided to move forward with today?</p> <p>8 A. Yes, sir.</p> <p>9 Q. I understand that you'll only be</p> <p>10 testifying with respect to a certain part of</p> <p>11 Publix's business. Can you explain to me what</p> <p>12 part of Publix's business you'll be testifying</p> <p>13 about today?</p> <p>14 A. The grocery retail.</p> <p>15 Q. And can you describe briefly what, what</p> <p>16 the grocery retail business is?</p> <p>17 A. Shell eggs and egg substitutes.</p> <p>18 Q. And egg substitutes. Will you be</p> <p>19 testifying today about the deli business unit?</p> <p>20 A. No, sir.</p> <p>21 Q. Will you be testifying about the bakery</p> <p>22 business unit?</p>	<p style="text-align: right;">17</p> <p>1 Q. What did you speak to Ms. Brous about?</p> <p>2 A. About issues with community affairs.</p> <p>3 Q. Would that include newspapers that</p> <p>4 Publix receives?</p> <p>5 A. Newspapers that Publix receives, no,</p> <p>6 sir.</p> <p>7 Q. So what do you mean by community</p> <p>8 affairs?</p> <p>9 A. Questions that communities would --</p> <p>10 people in the community would ask Publix.</p> <p>11 Q. Would that include animal welfare,</p> <p>12 activist groups such as PETA or the Humane</p> <p>13 Society?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Who is James Lucas?</p> <p>16 A. He was my supervisor.</p> <p>17 Q. When you were a buyer?</p> <p>18 A. For the eggs when I first came to the</p> <p>19 business, yes, sir.</p> <p>20 Q. Is he still in that role now?</p> <p>21 A. No, sir.</p> <p>22 Q. What is his current role?</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 A. He's category manager for another 2 business unit. 3 Q. What did you speak to Mr. Lucas about? 4 A. We just went over issues that we had 5 dealt with when we were on the desk together. 6 Q. Issues related to the acquisition of 7 shell eggs? 8 A. Yes, sir. 9 Q. And liquid egg substitutes? 10 A. Yes, sir. 11 Q. Who is Greg Bates? 12 A. Greg Bates was the category manager 13 before I got into the office. 14 Q. Did you speak with him on the same 15 topics you spoke to Mr. Lucas? 16 A. Yes, sir. 17 Q. And I'm sorry, I missed the fourth name 18 that you had mentioned. 19 A. Kevin Ralph. 20 Q. Who is Kevin Ralph? 21 A. He worked for MSP at the time. 22 Q. Who is MSP?</p>	<p style="text-align: right;">20</p> <p>1 opportunity to finish the answer to that 2 previous question. 3 BY MR. SCHWINGLER: 4 Q. Sure. Apart from Ms. Brous, Mr. Luke, 5 Mr. Bates and Mr. Ralph, did you speak with anyone 6 else preparing for the deposition today? 7 A. Counsel. 8 Q. Other than counsel, did you speak with 9 anyone else? 10 A. No, sir. 11 Q. Have you discussed this deposition with 12 anyone other than the counsel and the four people 13 that you mentioned? 14 A. No, sir. 15 Q. So I'll try to be precise with the 16 timing or the, I guess the temporal scope of the 17 questions, what years we're referring to. Most of 18 the questions you can assume, unless I state 19 otherwise, that we're discussing the period 20 between January 1st, 1999 and December 31st, 2008. 21 But we will try to identify what time period we're 22 talking about as we go along. If you have any</p>
<p style="text-align: right;">19</p> <p>1 A. MSP does all of our acquisitions for 2 private label products. 3 Q. Is MSP a broker? 4 A. No, sir. Works for Publix. 5 Q. Is it part of Publix? 6 A. Yes, sir. 7 Q. So MSP is a division or unit within 8 Publix? 9 A. Yes, sir. 10 Q. Not a separate company? 11 A. No, sir. 12 Q. I'm going to try to be precise about 13 the -- 14 MR. GERMAINE: I'm sorry. Pardon the 15 interruption. I don't think the witness was 16 completely done with his answer before to the 17 question of who he met with in preparation 18 for his deposition. 19 MR. SCHWINGLER: Oh, I'm sorry. 20 MR. GERMAINE: I just, I think we 21 started moving quickly. He may have been, I 22 don't know. I just want to give him an</p>	<p style="text-align: right;">21</p> <p>1 questions about what time period we're talking 2 about, please don't hesitate to ask. 3 Mr. Wilson, can you identify all of 4 Publix's business units that purchase shell eggs? 5 A. Publix business units. Grocery retail. 6 Bakery. Deli. We're not talking about those 7 today. We're just talking about grocery retail. 8 We covered that earlier. 9 Q. Correct. Yes. Beyond the bakery and 10 deli units and the grocery retail unit that you're 11 testifying about, are you aware of any other 12 Publix business units that purchase shell eggs? 13 A. I don't work with those units, so -- 14 Q. So you don't know? 15 A. No, sir. 16 Q. Okay. 17 A. There is one other person I talked to 18 about this, though. 19 Q. Who is that? 20 A. CQA. Head of CQA. Mike Roberson. 21 Q. What is CQA? 22 A. Corporate Quality Assurance.</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 Q. What is CQA in charge of or responsible 2 for?</p> <p>3 A. Quality assurance.</p> <p>4 Q. Is that with respect to the products 5 that Publix buys or the products that Publix 6 sells?</p> <p>7 A. Both.</p> <p>8 Q. Both. So CQA would -- can you just 9 describe briefly for me what -- how CQA interacts 10 with the buyer?</p> <p>11 A. They, they just -- they insure that we 12 get the highest quality products. They test 13 products to make sure they are of the highest 14 quality.</p> <p>15 Q. Would that include taste testing?</p> <p>16 A. Yes, sir.</p> <p>17 Q. If there -- does CQA have authority to 18 overrule a buyer on which supplier to use for a 19 given product?</p> <p>20 A. It doesn't work that way. We work 21 together.</p> <p>22 Q. So when you say you work together, CQ --</p>	<p style="text-align: right;">24</p> <p>1 substitutes for the grocery business unit, have 2 responsibility for purchasing the liquid egg 3 substitute that becomes the Publix brand liquid 4 egg substitute?</p> <p>5 A. It's under our buyer number and there's 6 a lot of different -- I mean, like, CQA looks at 7 the product before we make a decision to insure 8 that it meet or exceeds national brand.</p> <p>9 Q. Sure. The -- but the decision would be 10 the buyer's decision; is that correct?</p> <p>11 A. Well, yes, sir.</p> <p>12 Q. I apologize if I asked this before, but 13 does Publix's grocery retail business unit 14 purchase shell eggs?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Are there any other names that the 17 grocery retail business unit goes by?</p> <p>18 A. No, sir.</p> <p>19 Q. So when I refer to the grocery unit or 20 the grocery retail unit, you understand me to mean 21 the division within Publix that buys shell eggs 22 and puts them in stores and ultimately sells them</p>
<p style="text-align: right;">23</p> <p>1 is CQA a source of information for the buyer?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Who has ultimate authority to decide 4 which supplier to use?</p> <p>5 A. The authority? The customer when they 6 vote. Customers buy products. That's the 7 products that we want to sell to them.</p> <p>8 Q. Sure. Would the buyer for eggs and the 9 grocery retail unit be responsible for buying 10 Publix brand liquid egg substitute?</p> <p>11 A. Would the buyer for Publix -- repeat 12 that question.</p> <p>13 Q. Sure. Let me ask it a different way. 14 Does Publix sell its own brand of retail liquid 15 egg substitute?</p> <p>16 A. We do have our own brand, yes, sir.</p> <p>17 Q. And does Publix make that, itself?</p> <p>18 A. No, sir.</p> <p>19 Q. Publix buys that product from a 20 supplier, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Does the buyer of eggs and liquid egg</p>	<p style="text-align: right;">25</p> <p>1 to customers?</p> <p>2 A. Yes, sir.</p> <p>3 Q. When Publix grocery unit purchases shell 4 eggs, does it purchase them for retail sale?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Does it also purchase shell eggs for 7 distribution to other companies?</p> <p>8 A. No, sir.</p> <p>9 Q. Does it purchase -- does the grocery 10 business unit purchase shell eggs to be used in 11 Publix-made products?</p> <p>12 A. The grocery retail unit?</p> <p>13 Q. Yes, sir.</p> <p>14 A. No, sir.</p> <p>15 Q. So the only reason the grocery retail 16 unit would purchase shell eggs would be to turn 17 around and resell them as shell eggs to a 18 customer.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is that also true for retail liquid egg 21 substitutes?</p> <p>22 A. For the grocery retail unit, yes, sir.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

8 (Pages 26 to 29)

<p style="text-align: right;">26</p> <p>1 Q. Does the grocery retail unit purchase</p> <p>2 egg products?</p> <p>3 A. Egg products? Like liquid eggs?</p> <p>4 Q. Do you understand that this lawsuit</p> <p>5 involves both shell eggs and egg products?</p> <p>6 A. What type of egg products are you</p> <p>7 talking about? We talked about liquid eggs.</p> <p>8 That's an egg product.</p> <p>9 Q. I'm just looking, before I go any</p> <p>10 further, for your understanding, if you have any,</p> <p>11 of what the term egg products means for purposes</p> <p>12 of this litigation.</p> <p>13 A. Can you explain it to me?</p> <p>14 Q. Does Publix -- let me ask a different</p> <p>15 question. Does Publix's grocery unit purchase</p> <p>16 unpasteurized liquid eggs?</p> <p>17 A. No, sir.</p> <p>18 Q. Does Publix's grocery business unit</p> <p>19 purchase dried egg whites?</p> <p>20 A. Um, I'm sure there are dried egg whites</p> <p>21 on the baking aisle. I'm sure there are.</p> <p>22 Q. And would those dried egg whites be sold</p>	<p style="text-align: right;">28</p> <p>1 A. Okay.</p> <p>2 Q. What employees within the grocery unit</p> <p>3 are responsible for shell egg procurement</p> <p>4 decisions?</p> <p>5 A. The buyer, the category manager and the</p> <p>6 business development director. BDD.</p> <p>7 Q. For large -- withdrawn.</p> <p>8 Who has the ultimate responsibility for</p> <p>9 a purchasing decision?</p> <p>10 A. The business development director.</p> <p>11 Q. And is that -- when you were the buyer</p> <p>12 for eggs, did you report to the business</p> <p>13 development director?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And who, who was the business</p> <p>16 development director, if you know, in 2002?</p> <p>17 A. 2002, I think it was Dan Maloney. Best</p> <p>18 of my knowledge, it was Dan Maloney.</p> <p>19 Q. Between 2002 and December 31st of 2008,</p> <p>20 was Mr. Maloney always the business development</p> <p>21 manager?</p> <p>22 MR. GERMAINE: Director.</p>
<p style="text-align: right;">27</p> <p>1 at retail to a customer?</p> <p>2 A. Yes.</p> <p>3 Q. Publix doesn't use them to then make a</p> <p>4 different product?</p> <p>5 A. Once again, we're talking about the</p> <p>6 grocery business unit. I don't know if another</p> <p>7 business unit uses them or not. I don't work in</p> <p>8 those units.</p> <p>9 Q. But for the grocery unit, they would not</p> <p>10 take dried egg whites and make a different product</p> <p>11 out of it?</p> <p>12 A. We don't make prepared foods, so, no,</p> <p>13 sir.</p> <p>14 Q. Okay. So just for, for, I guess ease of</p> <p>15 reference, when I'm referring to egg products, I'm</p> <p>16 referring to a product that is made from a shell</p> <p>17 egg. Whether it's dried egg whites or a liquid</p> <p>18 yolk or -- I'm not referring to mayonnaise or</p> <p>19 something where the egg is, you know, used to make</p> <p>20 some sort of a higher value-added food product.</p> <p>21 I'm just referring to, something more along the</p> <p>22 lines of a dried egg or a, or a liquid egg.</p>	<p style="text-align: right;">29</p> <p>1 A. Business development director. Before</p> <p>2 him was Dave Cerra. It could've been Dave Cerra,</p> <p>3 but I don't know exactly when they changed</p> <p>4 positions, so --</p> <p>5 Q. Was anybody other than Dave Cerra or --</p> <p>6 A. Dan Maloney.</p> <p>7 Q. Or Dan -- is it Maloney or Malone?</p> <p>8 A. Maloney.</p> <p>9 Q. Or than Mr. Cerra or Mr. Maloney, the</p> <p>10 business development director between 2002 and the</p> <p>11 year end of 2008?</p> <p>12 A. No, sir.</p> <p>13 Q. Within the grocery retail unit, who was</p> <p>14 responsible for selecting which supplier to</p> <p>15 purchase from?</p> <p>16 A. Um, that would be the, the business</p> <p>17 unit. Between the BDD, the category manager and</p> <p>18 the buyer to make that decision.</p> <p>19 Q. Okay. Who within the grocery retail</p> <p>20 unit, was responsible for negotiating prices with</p> <p>21 egg suppliers?</p> <p>22 A. That's mainly the buyer.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

9 (Pages 30 to 33)

<p style="text-align: right;">30</p> <p>1 Q. So the business development director 2 would be involved in decisions regarding which 3 suppliers to use; is that correct? 4 A. Yes. 5 Q. But would not be involved in the 6 day-to-day price negotiations? 7 A. For the most part, no, sir. 8 Q. If there was a discussion as to what 9 type of pricing structure to use when purchasing 10 shell eggs as opposed to just the price on a given 11 day, would the business development director be 12 involved in that discussion? 13 MR. GERMAINE: Objection to form. 14 BY MR. SCHWINGLER: 15 Q. Do you understand what I mean by pricing 16 structure? 17 A. Can you explain it to me? 18 Q. Sure. So when I say pricing structure, 19 I'm talking about the mechanism by which the eggs 20 are priced. For example, whether it's a discount 21 off of the market price or a fixed price that 22 exists for a year and doesn't change or a price</p>	<p style="text-align: right;">32</p> <p>1 market prices? 2 A. No, sir. 3 Q. I know it may be a long list, so let's 4 just stick with sort of the major suppliers. Can 5 you identify the entities that supplied a grocery 6 retail unit with shell eggs? 7 A. Currently? 8 Q. You can start with currently and we can 9 work backwards if that works. 10 A. Currently, we have Cal-Maine and Country 11 Charm. 12 Q. What percentage of Publix's shell eggs 13 do those two entities collectively supply? 14 A. Publix's shell eggs? 15 Q. Yeah? 16 A. A hundred percent. 17 Q. A hundred percent. So those are the 18 only two shell egg suppliers Publix currently 19 uses? 20 A. From grocery retail, yes, sir. 21 Q. And what entities supply the grocery 22 retail unit with retail liquid egg substitutes?</p>
<p style="text-align: right;">31</p> <p>1 that's based off of grain. There's a number of 2 different ways to do it. 3 Sort of how the price is determined. Do 4 you understand that? 5 A. I didn't know there was a multiple way 6 to do eggs, no, sir. 7 Q. What, in your understanding, is the way 8 eggs are priced? 9 A. Off of the Urner Barry. 10 Q. By Urner -- what is Urner Barry? 11 A. That's a shell egg market; liquid egg 12 market. Also, they price eggs or they set a cost 13 every day. 14 Q. So they report the prevailing market 15 price for shell eggs on a daily basis? 16 A. And liquid eggs. 17 Q. And liquid eggs. Okay. So you're not 18 aware of any way to purchase shell eggs other than 19 off of the Urner Barry market? 20 A. Not that I'm aware of, no, sir. 21 Q. Are you aware of whether Publix 22 considered other ways to purchase eggs other than</p>	<p style="text-align: right;">33</p> <p>1 A. ConAgra has the account for Publix 2 brand. 3 Q. So ConAgra has the store brand? 4 A. Yes, sir. 5 Q. Have they always had the store brand? 6 A. As far as I know, yes, sir. 7 Q. Does ConAgra also sell liquid branded 8 egg substitutes? 9 A. Yes, sir. 10 Q. Is that the Egg Beaters brand? 11 A. Yes, sir. 12 Q. Does Publix purchase any competing 13 products to the ConAgra product? 14 A. Yes, sir. 15 Q. What would those be? 16 A. Papetti's. 17 Q. And do you understand that Papetti's is 18 part of Michael Foods? 19 A. Yes, sir. 20 Q. What product does Papetti's sell to 21 Publix? 22 A. All Whites.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 Q. Does Papetti's also sell the Better'n 2 Eggs product?</p> <p>3 A. Yes, sir.</p> <p>4 Q. I understand that Publix produced its 5 transactional data for the grocery retail unit in 6 about 15 separate Excel files. If you know, can 7 you explain the reason for that?</p> <p>8 A. No, sir.</p> <p>9 Q. And you do not know?</p> <p>10 A. No, sir.</p> <p>11 Q. Three of the files have been identified 12 by counsel as grocery purchasing-warehouse files. 13 Do you understand what grocery 14 purchasing-warehouse means?</p> <p>15 A. I can assume it would mean our grocery 16 purchasing warehouses.</p> <p>17 Q. So would these -- would that be data, 18 then, that relates to -- what do you mean by a 19 warehouse?</p> <p>20 A. Where product is stored before it goes 21 to the store.</p> <p>22 Q. So can you, if you know, can you walk me</p>	<p style="text-align: right;">36</p> <p>1 page of one of the tabs in that document so we 2 could see what the column headers were along the 3 top. Do you see the column headers I'm referring 4 to?</p> <p>5 A. Yes.</p> <p>6 Q. Can you explain to me what PO number 7 means?</p> <p>8 A. That's the purchase order number.</p> <p>9 Q. And so would a PO number refer to a 10 specific invoice?</p> <p>11 MR. GERMAINE: Objection to form. 12 BY MR. SCHWINGLER:</p> <p>13 Q. Can you explain to me what a purchase 14 order number is?</p> <p>15 A. That's the, the order that logistics 16 places on the invoice when it goes out to the 17 supplier.</p> <p>18 Q. So every time Publix buys whatever this 19 product is, Egg Beaters twin pack, would a new 20 purchaser order number be generated?</p> <p>21 A. Yes.</p> <p>22 Q. Can you explain to me what item code</p>
<p style="text-align: right;">35</p> <p>1 through the process by which a shell egg would get 2 from the supplier to the grocery aisle in front of 3 the customer?</p> <p>4 A. That's a direct ship product. That 5 doesn't go to our warehouse, so that comes from 6 the supplier to our store.</p> <p>7 Q. Okay. Is that always the case?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What about retail liquid egg 10 substitutes? Would those go to the warehouse?</p> <p>11 A. Yes, sir.</p> <p>12 Q. They would. All right. Exhibit 2, I 13 believe.</p> <p>14 (Wilson 2 Received and Marked)</p> <p>15 BY MR. SCHWINGLER:</p> <p>16 Q. So what I've handed you, Mr. Wilson, is 17 marked as Exhibit 2. And I'll represent for the 18 Record, so you know what we're looking at, this 19 is, this is essentially a, a print out of the 20 first page of the Excel spreadsheet that was 21 produced at Bates number PUB_EGGS_020502. It's, 22 it's -- essentially, we created a PDF of the first</p>	<p style="text-align: right;">37</p> <p>1 means?</p> <p>2 A. That's our internal code for the 3 product.</p> <p>4 Q. For a given product, will a given 5 product have the same item code -- withdrawn.</p> <p>6 If, for a given item code, for example, 7 67015, will that code always refer to the same 8 product?</p> <p>9 A. Yes.</p> <p>10 Q. So if you look at item code 67015, you 11 know that that entry is always referring to the 12 Egg Beaters twin pack 16-ounce product that's 13 listed on this sheet.</p> <p>14 A. Yes.</p> <p>15 Q. Received date, can you tell me what that 16 column means?</p> <p>17 A. That's the date it was received in the 18 warehouse.</p> <p>19 Q. The date the product was received?</p> <p>20 A. Yes.</p> <p>21 Q. And the column that's says item and then 22 DESC, can you explain to me what that column is?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

11 (Pages 38 to 41)

<p style="text-align: right;">38</p> <p>1 A. The item description column.</p> <p>2 Q. Is that what item DESC refers to?</p> <p>3 A. Yes.</p> <p>4 Q. Item description?</p> <p>5 A. Yes.</p> <p>6 Q. What is, what is the item description?</p> <p>7 A. Egg Beaters twin pack, in this case.</p> <p>8 Q. The item pack column, what does that</p> <p>9 refer to?</p> <p>10 A. How many units are in the case.</p> <p>11 Q. The units of measure column, am I</p> <p>12 correct that that refers to the, in this case, the</p> <p>13 volume of the unit?</p> <p>14 A. Yes.</p> <p>15 Q. So we're looking at a 16-ounce carton of</p> <p>16 Egg Beaters on this, on this spreadsheet?</p> <p>17 A. It appears it's two 8-ounce cartons, but</p> <p>18 it's a 16-ounce unit.</p> <p>19 Q. Because it's a twin pack?</p> <p>20 A. Yes.</p> <p>21 Q. The vendor NUM column, can you explain</p> <p>22 what that means?</p>	<p style="text-align: right;">40</p> <p>1 Q. The column TOT cases and then RCVD.</p> <p>2 That column, what does that mean?</p> <p>3 A. Total cases received.</p> <p>4 Q. And what does that represent?</p> <p>5 A. The number of cases ordered on the PO.</p> <p>6 Q. The case cost column, what does that</p> <p>7 represent?</p> <p>8 A. The cost of the case.</p> <p>9 Q. So for this order, if it says there's</p> <p>10 240 total cases received, the total order was 240</p> <p>11 cases of 12, twin packs of the Egg Beaters</p> <p>12 product?</p> <p>13 A. Yes.</p> <p>14 Q. And the cost for each, each of those 240</p> <p>15 cases was \$22.20; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And the total invoice cost, can you</p> <p>18 explain what that means?</p> <p>19 A. That's your total cases received times</p> <p>20 the case cost.</p> <p>21 Q. So is it true that for, for all entries</p> <p>22 on this spreadsheet, if you multiply the number in</p>
<p style="text-align: right;">39</p> <p>1 A. Vendor number.</p> <p>2 Q. And what, what is the vendor number?</p> <p>3 A. It's the number assigned to that vendor.</p> <p>4 Q. So for a given vendor number, for</p> <p>5 example, number 338601, that is referring to a</p> <p>6 specific company that supplies Publix with some</p> <p>7 product?</p> <p>8 A. With this product.</p> <p>9 Q. With this product. So in this case --</p> <p>10 well, but if I, if I see 338601 under the vendor</p> <p>11 number column, will that always be referring to</p> <p>12 the same company?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And then the vendor name column,</p> <p>15 can you explain what that is?</p> <p>16 A. That's the vendor name for the, the</p> <p>17 vendor number.</p> <p>18 Q. That's who the vendor is?</p> <p>19 A. Yes.</p> <p>20 Q. So here ConAgra Dairy, that's the</p> <p>21 supplier that is supplying item code 67015?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">41</p> <p>1 the total cases received column, by the number in</p> <p>2 the case cost column, that will equal the total</p> <p>3 invoice cost?</p> <p>4 A. Yes.</p> <p>5 Q. Is there any reason that total invoice</p> <p>6 cost would not equal the product of the total</p> <p>7 cases received times the case cost?</p> <p>8 A. There was an error.</p> <p>9 Q. Turning back to the case cost, does this</p> <p>10 column reflect shipping costs?</p> <p>11 A. Yes.</p> <p>12 Q. It does. So the price that Publix paid</p> <p>13 for this product included the shipping cost.</p> <p>14 There wasn't a separate charge. That wouldn't be</p> <p>15 on this sheet.</p> <p>16 A. No.</p> <p>17 Q. Does the case cost column include any</p> <p>18 discounts that Publix may have received for the</p> <p>19 product?</p> <p>20 MR. GERMAINE: Objection to form.</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. Let me try again. Does Publix ever</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 receive a discount from a supplier of shell eggs?</p> <p>2 A. Not for Publix products.</p> <p>3 Q. What do you mean by Publix products?</p> <p>4 A. Products with Publix's name on them.</p> <p>5 Q. What about other branded products?</p> <p>6 MR. GERMAINE: Objection to form.</p> <p>7 BY MR. SCHWINGLER:</p> <p>8 Q. Does Publix ever receive a discount from</p> <p>9 a supplier for purchases of non-Publix branded</p> <p>10 shell eggs?</p> <p>11 A. Yes.</p> <p>12 Q. Can you give me an example of what such</p> <p>13 a discount would be?</p> <p>14 A. Total off allowance.</p> <p>15 Q. And what is total off allowance?</p> <p>16 A. That's an amount off per case.</p> <p>17 Q. And how is that negotiated?</p> <p>18 A. They generally send us a deal sheet with</p> <p>19 a total off allowance on it.</p> <p>20 Q. How frequently does Publix receive a</p> <p>21 total off allowance?</p> <p>22 A. As frequently as suppliers want to</p>	<p style="text-align: right;">44</p> <p>1 think is going to throw him for a loop.</p> <p>2 BY MR. SCHWINGLER:</p> <p>3 Q. Sure. Can you just identify one</p> <p>4 non-Publix brand shell egg that Publix stores</p> <p>5 sell?</p> <p>6 A. Eggland's Best.</p> <p>7 Q. Eggland's Best. Any others?</p> <p>8 A. Four Grain.</p> <p>9 Q. So assume that the supplier of the -- of</p> <p>10 Four Grain shell eggs to Publix would like Publix</p> <p>11 to reduce the retail price of that product. How</p> <p>12 -- I just need you to explain to me the process by</p> <p>13 which the total off allowance comes into being.</p> <p>14 Does the supplier initiate the conversation with</p> <p>15 Publix?</p> <p>16 MR. GERMAINE: Object to the form.</p> <p>17 A. Yes.</p> <p>18 BY MR. SCHWINGLER:</p> <p>19 Q. So Publix would not pick up the phone</p> <p>20 and call the supplier, Four Grain, and say, how</p> <p>21 about we do a total off allowance?</p> <p>22 MR. GERMAINE: Objection to form. You</p>
<p style="text-align: right;">43</p> <p>1 receive a cost or price break on the shipment.</p> <p>2 Q. So the total off allowance is something</p> <p>3 that a supplier would do in order to cause Publix</p> <p>4 to lower the retail price for that product that</p> <p>5 the customer is paying?</p> <p>6 A. Yes.</p> <p>7 Q. And that -- would this include shell</p> <p>8 eggs?</p> <p>9 A. The branded shell eggs?</p> <p>10 Q. Yeah.</p> <p>11 A. Yes, sir.</p> <p>12 Q. So, for example, if Publix was charging</p> <p>13 \$1.50 a dozen for Cal-Maine branded Grade A large</p> <p>14 shell eggs, and Cal-Maine wanted, for whatever</p> <p>15 reason, to have Publix lower that price, Cal-Maine</p> <p>16 would offer or would send Publix a total off</p> <p>17 allowance, which would give Publix a lower price</p> <p>18 that it was paying for those eggs?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 MR. SCHWINGLER: That may have been</p> <p>21 confusing. What I'm trying to --</p> <p>22 MR. GERMAINE: Cal-Maine branded is -- I</p>	<p style="text-align: right;">45</p> <p>1 can answer.</p> <p>2 A. Um, I'm not going to say it would never</p> <p>3 happen, but generally, no.</p> <p>4 BY MR. SCHWINGLER:</p> <p>5 Q. When a supplier gives Publix a total off</p> <p>6 allowance, that results in a lower price paid by</p> <p>7 Publix, correct?</p> <p>8 A. Yes.</p> <p>9 Q. How much of that lower price, if you</p> <p>10 know, does Publix pass on to the retail customer?</p> <p>11 MR. GERMAINE: I'm going to object to</p> <p>12 the form of the question. It calls for</p> <p>13 downstream testimony. We objected to that</p> <p>14 topic in the notice. The witness can answer</p> <p>15 to the extent he knows in an individual</p> <p>16 capacity.</p> <p>17 A. It depends.</p> <p>18 BY MR. SCHWINGLER:</p> <p>19 Q. When you say it depends, what factors</p> <p>20 does Publix consider when deciding how much of the</p> <p>21 cost savings to pass on to the customer?</p> <p>22 MR. GERMAINE: I'm just going to insert</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

13 (Pages 46 to 49)

<p style="text-align: right;">46</p> <p>1 an ongoing downstream objection. I don't</p> <p>2 need to make that every time.</p> <p>3 MR. SCHWINGLER: That's fine.</p> <p>4 A. There's, there's hundred of different</p> <p>5 factors involved.</p> <p>6 BY MR. SCHWINGLER:</p> <p>7 Q. Can you identify --</p> <p>8 A. There's no way I could explain all of</p> <p>9 them to you.</p> <p>10 Q. Is it true, though, that Publix doesn't</p> <p>11 pass on the entire cost savings to the customer?</p> <p>12 A. No.</p> <p>13 Q. Publix would pass on an amount less than</p> <p>14 the total cost, total off allowance?</p> <p>15 A. No, that's not true.</p> <p>16 Q. If Publix saved \$100 on a total off</p> <p>17 allowance, would Publix pass on less than \$100 in</p> <p>18 savings to the customers?</p> <p>19 A. No.</p> <p>20 Q. Would Publix pass along exactly \$100 in</p> <p>21 savings to the customers?</p> <p>22 A. No. Again, this is a broad question.</p>	<p style="text-align: right;">48</p> <p>1 A. Yes.</p> <p>2 Q. And they vary from circumstance to</p> <p>3 circumstance?</p> <p>4 A. Yes.</p> <p>5 Q. Meaning, on July 1st, Publix might</p> <p>6 consider certain factors, and on August 15th, they</p> <p>7 might consider other factors?</p> <p>8 MR. GERMAINE: Objection to form.</p> <p>9 BY MR. SCHWINGLER:</p> <p>10 Q. Does Publix always consider the exact</p> <p>11 same factors when determining how much of a price,</p> <p>12 price savings to pass along to the customer?</p> <p>13 MR. GERMAINE: Objection to form.</p> <p>14 A. That's a very broad question again.</p> <p>15 BY MR. SCHWINGLER:</p> <p>16 Q. You can answer it if you can.</p> <p>17 A. There's no answer to that question. I</p> <p>18 mean, that's an absolute and it's -- there's many</p> <p>19 different factors. I've told you that three</p> <p>20 times. I couldn't explain them all to you.</p> <p>21 Q. Sure. I guess what I'm asking is, I</p> <p>22 don't need an explanation of each factor. What</p>
<p style="text-align: right;">47</p> <p>1 There's so many different factors involved, I</p> <p>2 couldn't explain them all to you.</p> <p>3 Q. Sure. Let me ask it a different way.</p> <p>4 Is it -- has -- would Publix ever pass on more</p> <p>5 than the \$100 cost savings to the customer?</p> <p>6 A. Yes.</p> <p>7 Q. So there are instances where Publix</p> <p>8 receives a price discount from the supplier and</p> <p>9 then gives a larger price discount to the retail</p> <p>10 customer for that product?</p> <p>11 A. There are circumstances.</p> <p>12 Q. Okay. And I assume, is it correct there</p> <p>13 are circumstances where Publix receives a price</p> <p>14 discount from the supplier and passes along a</p> <p>15 lesser discount to the customer?</p> <p>16 A. Yes.</p> <p>17 MR. GERMAINE: Objection.</p> <p>18 BY MR. SCHWINGLER:</p> <p>19 Q. And just to be clear, for the Record,</p> <p>20 the factors that Publix considers when deciding</p> <p>21 how much to pass along to the customer, are great</p> <p>22 in number?</p>	<p style="text-align: right;">49</p> <p>1 I'm asking is, when Publix, when Publix considers</p> <p>2 whether to pass along a total off allowance to the</p> <p>3 retail customer, by that I mean, reduce the price</p> <p>4 charged to the retail customer for that product.</p> <p>5 You've testified that there are many factors that</p> <p>6 Publix considers when deciding how much of that</p> <p>7 savings to pass along; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And what I'm asking is, does Publix</p> <p>10 always consider the exact same factors when making</p> <p>11 those decisions?</p> <p>12 A. The changing marketplace.</p> <p>13 Q. Maybe, maybe I'll just ask this: I</p> <p>14 think you've already testified to this, so i</p> <p>15 apologize if we're re-covering the same ground,</p> <p>16 but when Publix considers whether to pass along</p> <p>17 the cost savings it realizes from a total cost,</p> <p>18 total off allowance, in terms of how that savings</p> <p>19 gets reflected in the retail price of the shell</p> <p>20 egg, is it your testimony that the decision Publix</p> <p>21 makes, the decision Publix makes about how much of</p> <p>22 the cost savings to pass on varies depending on</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 the circumstances?</p> <p>2 MR. GERMAINE: Objection to form.</p> <p>3 A. It's a very broad question. All</p> <p>4 decisions vary.</p> <p>5 BY MR. SCHWINGLER:</p> <p>6 Q. Sometimes Publix passes on a larger</p> <p>7 portion of the discount and other times, it passes</p> <p>8 on a lesser portion of the discount; is that</p> <p>9 accurate?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Thank you. Turning back to</p> <p>12 Exhibit 2. Back to the case cost column. Are</p> <p>13 taxes reflected in that column?</p> <p>14 MR. GERMAINE: Objection to form.</p> <p>15 BY MR. SCHWINGLER:</p> <p>16 Q. Withdrawn. Earlier, you testified that</p> <p>17 the case cost refers to the price Publix paid for</p> <p>18 a case of that product; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Does the price listed under the case</p> <p>21 cost column include taxes?</p> <p>22 MR. GERMAINE: Objection to form. Lacks</p>	<p style="text-align: right;">52</p> <p>1 shipping?</p> <p>2 A. No.</p> <p>3 Q. Does Publix receive rebates for</p> <p>4 grocery -- excuse me. Does Publix's grocery unit</p> <p>5 ever receive rebates from shell egg suppliers for</p> <p>6 purchases of shell eggs?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Does Publix ever receive volume</p> <p>9 discounts for purchases of shell eggs?</p> <p>10 A. No.</p> <p>11 Q. Does Publix ever receive rebates for</p> <p>12 purchases of liquid retail egg substitute?</p> <p>13 A. Um, rebates, no, sir.</p> <p>14 Q. Does Publix ever receive volume</p> <p>15 discounts for retail liquid egg substitutes?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. How does the grocery unit -- withdrawn.</p> <p>18 When the grocery unit purchases shell eggs, did</p> <p>19 you testify earlier that the supplier delivers the</p> <p>20 shell eggs directly to the store?</p> <p>21 A. Yes.</p> <p>22 Q. And that's true for all purchases of</p>
<p style="text-align: right;">51</p> <p>1 foundation.</p> <p>2 BY MR. SCHWINGLER:</p> <p>3 Q. Can you answer the question, Mr. Wilson?</p> <p>4 A. That's the cost that we paid for the</p> <p>5 product.</p> <p>6 Q. Do you know what -- if the cost you paid</p> <p>7 for a case of Egg Beaters twin pack was \$22.20, do</p> <p>8 you know what makes up that \$22.20? Do you know</p> <p>9 if there's a shipping portion and a tax portion</p> <p>10 and a product portion, or do you just know the</p> <p>11 number?</p> <p>12 A. That's the number.</p> <p>13 Q. Okay. If I wanted to find out what all,</p> <p>14 you know, what you -- what Publix gets for its</p> <p>15 \$22.20, how would I find that out?</p> <p>16 MR. GERMAINE: Objection to form.</p> <p>17 A. We get a case of product.</p> <p>18 BY MR. SCHWINGLER:</p> <p>19 Q. And you write -- you pay \$22.20 to the</p> <p>20 supplier for that product?</p> <p>21 A. Yes.</p> <p>22 Q. And you don't pay a separate charge for</p>	<p style="text-align: right;">53</p> <p>1 shell eggs?</p> <p>2 A. Yes.</p> <p>3 Q. And you testified earlier, I believe,</p> <p>4 that Publix will purchase retail liquid egg</p> <p>5 substitutes and will receive them from -- through</p> <p>6 a warehouse?</p> <p>7 A. Yes.</p> <p>8 Q. Is that true for all purchases of retail</p> <p>9 liquid egg substitutes?</p> <p>10 A. Yes.</p> <p>11 Q. So there's never a situation where, for</p> <p>12 example, ConAgra would deliver a pallet of Egg</p> <p>13 Beaters directly to a Publix store.</p> <p>14 A. No.</p> <p>15 Q. And -- and again, if I, if I asked you</p> <p>16 this before, I apologize. Do the case costs --</p> <p>17 does the case cost column reflect the delivery</p> <p>18 charge paid by Publix, if there is one?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. That's the cost we pay for a case of</p> <p>21 product.</p> <p>22 BY MR. SCHWINGLER:</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

15 (Pages 54 to 57)

<p style="text-align: right;">54</p> <p>1 Q. And there's -- and you testified earlier 2 that there -- that Publix doesn't pay separately 3 for shipping, correct?</p> <p>4 A. Yes.</p> <p>5 Q. How would one determine which portion of 6 the case cost is attributable to shipping?</p> <p>7 MR. GERMAINE: Objection. Asked and 8 answered. You can answer again if you can.</p> <p>9 A. I've already answered that question.</p> <p>10 BY MR. SCHWINGLER:</p> <p>11 Q. Sure. If you could just answer it one 12 more time, please.</p> <p>13 A. That's the cost we pay for a case of 14 product.</p> <p>15 Q. Sure. My question, though, is, how 16 would you determine what portion of that cost is 17 attributable to shipping?</p> <p>18 A. I can't.</p> <p>19 Q. And when you say you can't, is it 20 because you don't have the knowledge or is it 21 because it's not possible to, to break out the 22 shipping charge?</p>	<p style="text-align: right;">56</p> <p>1 MR. GERMAINE: Let's just ask him if the 2 meaning of the columns would differ. I 3 assume they won't, but --</p> <p>4 MR. SCHWINGLER: Yeah, yeah. So I will 5 hand -- let's have this as Exhibit 3, please. 6 (Wilson 3 Received and Marked)</p> <p>7 BY MR. SCHWINGLER:</p> <p>8 Q. Mr. Wilson, I've handed you what has 9 been marked as Exhibit 3. It's a document 10 bearing, in the bottom right corner, the 11 designation native file_[PUB_EGGS_020685]_page 1. 12 As with Exhibit 2, I can represent that this 13 document was a PDF created from a page of the 14 document, the Excel file produced by Publix as 15 PUB_EGGS_020685. If you could just review the 16 column headers at the top of the page and then let 17 me know once you've had a chance.</p> <p>18 A. Yes, sir.</p> <p>19 Q. Now, it appears to me the column headers 20 are the same on Exhibit 3 as they were on Exhibit 21 2. Do you agree with that?</p> <p>22 A. Yes, sir.</p>
<p style="text-align: right;">55</p> <p>1 MR. GERMAINE: By you, do you mean 2 Publix or him personally?</p> <p>3 MR. SCHWINGLER: Let's start with him 4 personally.</p> <p>5 A. It's not possible.</p> <p>6 BY MR. SCHWINGLER:</p> <p>7 Q. It's not possible. Is that because 8 delivery charge is not -- is that, for example, 9 for this product, is it possible that Publix paid 10 a fixed price for the product and so the delivery 11 charge is, the shipping is just irrelevant?</p> <p>12 MR. GERMAINE: Objection.</p> <p>13 A. That's a cost we pay for a case of 14 product.</p> <p>15 BY MR. SCHWINGLER:</p> <p>16 Q. Okay. You can set Exhibit 2 aside. 17 Actually, you know what? Let's -- if you want to 18 just keep it close by. I have a lot of the same 19 questions for, you know, sort of the various 20 transactional data files, so to the extent they 21 are the same columns and the answers wouldn't 22 change, I can try to expedite it.</p>	<p style="text-align: right;">57</p> <p>1 Q. There was one column I forgot to ask 2 about, which is the right most column that says 3 create and then DTE. Can you explain what create 4 DTE stands for?</p> <p>5 A. Create date.</p> <p>6 Q. And what is the create date?</p> <p>7 A. I'm assuming that's when the PO was 8 created.</p> <p>9 Q. And how is the -- and the, the received 10 date was when you got the product, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the create date would be when you 13 ordered it?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. These are products that we're not 17 talking about in this deposition.</p> <p>18 Q. Oh, these products here are --</p> <p>19 A. Correct.</p> <p>20 Q. Deviled eggs?</p> <p>21 A. This is not grocery.</p> <p>22 Q. This is for a different business unit?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 A. Yes, sir. But the headings are the 2 same. 3 Q. And do you have, do you have any 4 knowledge about what those -- whether those 5 headings mean the same thing that they do on 6 Exhibit 2? 7 A. I don't have any knowledge of it, but I 8 would assume they would. They match up. 9 Q. My understanding is that this 10 spreadsheet was labeled warehouse business unit. 11 Do you know what the warehouse business unit is? 12 A. No, sir. 13 Q. Okay. All right. So you're not 14 familiar -- you did not prepare to testify today 15 about these products listed under the item 16 description column on this page? 17 A. No, sir. 18 Q. Okay. And you don't have any personal 19 knowledge about those products, do you? 20 A. I know they're products that we 21 purchased, but I don't know. 22 Q. You weren't personally involved in</p>	<p style="text-align: right;">60</p> <p>1 MR. SCHWINGLER: This will be Exhibit 4. 2 (Wilson 4 Received and Marked) 3 BY MR. SCHWINGLER: 4 Q. Exhibit 4, for the Record, is a one-page 5 print out of the first page of one of the tabs 6 produced by Publix at Bates number PUB_EGGS 7 _020490. I will ask you to review the document 8 briefly, Mr. Wilson, and let me know once you've 9 had a chance to -- 10 A. Yes, sir. 11 Q. There's a few additional columns on this 12 document from Exhibit 2 that we looked at before. 13 But just quickly, the column headers that appear 14 to be -- at least have the same terminology, do 15 you see the vendor name column? 16 A. Yes, sir. 17 Q. Does that mean the same thing it did on 18 Exhibit 2? 19 A. Yes, sir. 20 Q. Do you see the date received column? 21 A. Yes, sir. 22 Q. Does that also mean the same thing that</p>
<p style="text-align: right;">59</p> <p>1 negotiating the pricing? 2 A. No, sir. 3 Q. Okay. We'll set that aside. 4 Can you explain to me what the term DSD 5 means? 6 A. DSD is -- I'm trying to think what that 7 stands for. I know what it means. It's just -- 8 MR. GERMAINE: What does it mean? 9 A. It's non-warehouse products. 10 Q. So would that mean like? 11 A. Distributor, or distributor supplied -- 12 MR. GERMAINE: I think it's direct store 13 delivery. 14 A. Yes, sir. 15 BY MR. SCHWINGLER: 16 Q. Apart from the precise name, do you 17 understand DSD to mean products that are delivered 18 directly to Publix stores by the supplier? 19 A. Yes. 20 Q. And they do not go first to a central 21 warehouse? 22 A. Correct.</p>	<p style="text-align: right;">61</p> <p>1 it did on Exhibit 2? 2 A. Yes, sir. 3 Q. How about item code? Does that also 4 mean the same thing that item code meant on 5 exhibit 2? 6 A. Yes, sir. 7 Q. Would any of Publix's transaction data 8 that has a column titled item code O -- strike 9 that. 10 Can you tell me on the far left corner, 11 what the column AP vendor means? 12 A. No, sir, I can't. 13 Q. So you don't know what AP vendor means? 14 A. No, sir. 15 Q. Do you know who I could speak to to get 16 that information? 17 A. No, sir. 18 Q. Do you know what the column buyer vendor 19 means? 20 A. Yes, sir. 21 Q. What is that? 22 A. That's the vendor number assigned to my</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 buyer number or to the egg buyer's buyer number.</p> <p>2 It's not mine anymore.</p> <p>3 Q. And what is the egg buyer's buyer</p> <p>4 number?</p> <p>5 A. It's been since February. I think it's</p> <p>6 203.</p> <p>7 Q. For a number under the buyer vendor</p> <p>8 column --</p> <p>9 MR. GERMAINE: I'm sorry. Can you --</p> <p>10 what was that last answer, 203, what it was?</p> <p>11 BY MR. SCHWINGLER:</p> <p>12 Q. Let me rephrase that question. When you</p> <p>13 refer to the egg buyer's buyer number, what, what</p> <p>14 is that referring to?</p> <p>15 A. That's the buyer number assigned to the</p> <p>16 egg buyer.</p> <p>17 Q. So a Publix employee is given a number?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And when I look at the</p> <p>20 spreadsheet and it says buyer_vendor, how does</p> <p>21 that number relate to the egg buyer's buyer</p> <p>22 number?</p>	<p style="text-align: right;">64</p> <p>1 does that describe?</p> <p>2 A. The adjusted final pack.</p> <p>3 Q. And what is the adjusted final pack?</p> <p>4 A. The case.</p> <p>5 Q. What do you mean by that?</p> <p>6 A. How many units were in the case.</p> <p>7 Q. How many units are in a case? What does</p> <p>8 the word adjusted signify?</p> <p>9 A. Um, I'm not sure.</p> <p>10 Q. Not sure? Okay. And what is the</p> <p>11 extend -- the column that says extended cost, do</p> <p>12 you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Can you tell me what extended cost</p> <p>15 means?</p> <p>16 A. That would be the cost of a case of the</p> <p>17 product, multiplied by the, by the number of cases</p> <p>18 received.</p> <p>19 Q. Okay. And that is -- is that in US</p> <p>20 dollars?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And the -- you see the column</p>
<p style="text-align: right;">63</p> <p>1 A. That number is the vendor number.</p> <p>2 Q. So that refers only to the vendor.</p> <p>3 A. Yes.</p> <p>4 Q. It's -- the buyer vendor number is -- if</p> <p>5 I look at number 1405 in this column, will it</p> <p>6 always be referring to the same vendor?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. What does the invoice number</p> <p>9 column represent?</p> <p>10 A. That's the invoice that was delivered to</p> <p>11 the store. The order that was delivered to the</p> <p>12 store.</p> <p>13 Q. So for every entry that has that unique</p> <p>14 invoice number, that's all from the same invoice?</p> <p>15 A. Yes.</p> <p>16 Q. The column that says</p> <p>17 standard_D-E-S-C-R-I-P-T-I, can you tell me what</p> <p>18 that means?</p> <p>19 A. Standard description.</p> <p>20 Q. And what is that describing?</p> <p>21 A. The product.</p> <p>22 Q. Okay. The column ADJ_final_pack, what</p>	<p style="text-align: right;">65</p> <p>1 that says ADJ_final_quantity?</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what that means?</p> <p>4 A. That would be the number of cases</p> <p>5 received.</p> <p>6 Q. And what is the -- is it adjusted final</p> <p>7 quantity? Is that what the, um, the column is</p> <p>8 designating?</p> <p>9 A. Yes.</p> <p>10 Q. The next column to the right,</p> <p>11 ADJ_final_UOM, can you tell me what that means?</p> <p>12 A. Adjusted final unit of measure.</p> <p>13 Q. Okay. So what would the capital C mean</p> <p>14 in that column?</p> <p>15 A. Case.</p> <p>16 Q. Case. So then the next column to the</p> <p>17 right, ADJ_final_cost, can you tell me what that</p> <p>18 means?</p> <p>19 A. The cost of a case.</p> <p>20 Q. So that's the cost per case of that</p> <p>21 product.</p> <p>22 A. Yes.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 Q. And what is the column to the right, 2 ADJ_final_allow?</p> <p>3 A. Adjusted final allowance.</p> <p>4 Q. And what would that represent?</p> <p>5 A. TOA.</p> <p>6 Q. What's TOA?</p> <p>7 A. The total off allowance.</p> <p>8 Q. Okay. And then the, furtherest (ph) 9 most column to the right, store_number, can you 10 tell me what store number refers to?</p> <p>11 A. The location's store number.</p> <p>12 Q. So, for example, the first entry on this 13 spreadsheet was a -- represents two cases of 14 Eggland's large -- is that a shell egg?</p> <p>15 A. Yes.</p> <p>16 Q. Two cases of Eggland's large shell eggs 17 that were delivered to store number 273?</p> <p>18 A. Yes.</p> <p>19 Q. For a total price of \$52.50?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. These cost columns have slightly 22 different terminology than Exhibit 2, but what I'd</p>	<p style="text-align: right;">68</p> <p>1 eggs that Publix's grocery retail unit purchased 2 -- I take it, so -- because this spreadsheet has 3 the adjusted final allowance column, this 4 spreadsheet would reflect when Publix gets a 5 discount for this -- for these products; is that 6 right?</p> <p>7 A. Yes.</p> <p>8 Q. These are all zeros on this page. Well, 9 I may, I may revisit this later, but I think I'll 10 move on to -- all right. We've already covered -- 11 everything that's DSD was delivered directly to 12 the store and not through a warehouse; is that 13 right?</p> <p>14 A. Yes.</p> <p>15 (Wilson 5 Received and Marked)</p> <p>16 BY MR. SCHWINGLER:</p> <p>17 Q. Mr. Wilson, I'm handing you what's been 18 marked as Exhibit 5, which is a print out of one 19 page of the Excel spreadsheet produced by Publix 20 at Bates number PUB_EGGS_020491. If you could 21 review the column headers at the top of the page 22 and let me know once you've had a chance to do so.</p>
<p style="text-align: right;">67</p> <p>1 like to ask you is, are -- would your answers -- 2 are your answers the same for this exhibit in 3 terms of the -- whether the cost columns include 4 delivery charges?</p> <p>5 A. Yes.</p> <p>6 Q. And so, just to be clear for the Record, 7 the cost column reflects the price paid by Publix 8 for that product?</p> <p>9 A. Yes.</p> <p>10 Q. And Publix didn't pay a separate 11 delivery charge?</p> <p>12 A. No.</p> <p>13 Q. And it's not possible to determine how 14 much of the, for example, \$52.50 in the first 15 column or the first row, was attributed to 16 delivery?</p> <p>17 A. No.</p> <p>18 Q. And the same is true for taxes, correct?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. Yes.</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. Okay. For the products -- for the shell</p>	<p style="text-align: right;">69</p> <p>1 A. Yes, sir.</p> <p>2 Q. All right. For the column starting with 3 the column item code, do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Does that column represent the same 6 information that's in the item code column from 7 Exhibit 4?</p> <p>8 A. You mean it applies to the standard 9 description.</p> <p>10 Q. Yeah, yeah. Is the information that 11 would be represented in that column, the same type 12 of information that was in the item code column in 13 Exhibit 4?</p> <p>14 A. Yes.</p> <p>15 Q. Is that also true for the standard 16 description column?</p> <p>17 A. Yes.</p> <p>18 Q. Is that also true for the adjusted final 19 pack column?</p> <p>20 A. Yes.</p> <p>21 Q. Is that also true for the adjusted final 22 units of measure column?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 A. Yes.</p> <p>2 Q. Is that also true for the adjusted final</p> <p>3 quantity column?</p> <p>4 A. Yes.</p> <p>5 Q. And is that also true for the adjusted</p> <p>6 final cost Column?</p> <p>7 A. Yes.</p> <p>8 Q. So just to be clear for the Record, your</p> <p>9 testimony is that the -- these columns that have</p> <p>10 the same description, would provide the same types</p> <p>11 of information as those columns in the other -- in</p> <p>12 Exhibit 4?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. On the far right, there's a</p> <p>15 column called extended cost. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Can you explain what extended cost</p> <p>18 refers to?</p> <p>19 A. It is the cost of the product multiplied</p> <p>20 times the quantity delivered.</p> <p>21 Q. That would be the total price paid by</p> <p>22 Publix for that shipment?</p>	<p style="text-align: right;">72</p> <p>1 BY MR. SCHWINGLER:</p> <p>2 Q. And then this spreadsheet, Exhibit 5,</p> <p>3 has a column called DSD_INV_NUM. Does that column</p> <p>4 contain the same information as the invoice number</p> <p>5 column from Exhibit 4?</p> <p>6 A. Yes.</p> <p>7 Q. And the column to the right of that on</p> <p>8 Exhibit 5, DSD_INV_DT_REC, what is that?</p> <p>9 A. DSD invoice date received.</p> <p>10 Q. Does that have -- represent the same</p> <p>11 information as the date received column from</p> <p>12 Exhibit 4?</p> <p>13 A. Yes.</p> <p>14 Q. That's the date on which Publix received</p> <p>15 that product at its store, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 MR. SCHWINGLER: Go off the Record for a</p> <p>19 second.</p> <p>20 THE VIDEOGRAPHER: It's 10:22. We're</p> <p>21 going off the Record.</p> <p>22 (Proceedings recessed at 10:22 a.m.)</p>
<p style="text-align: right;">71</p> <p>1 A. Yes.</p> <p>2 Q. And there is an extended cost column in</p> <p>3 Exhibit 4. So would your answers, with respect to</p> <p>4 the extended cost column for Exhibit 5, be the</p> <p>5 same as Exhibit 4?</p> <p>6 A. Yes.</p> <p>7 Q. And just to speed things along, if you</p> <p>8 don't understand this question or if there's some</p> <p>9 confusion, the information I'm looking for is,</p> <p>10 I've asked a series of questions related to</p> <p>11 whether delivery charges and discounts and rebates</p> <p>12 and taxes are reflected in these cost columns.</p> <p>13 Are your answers the same for Exhibit 5 as they</p> <p>14 were for Exhibits 4 and 2?</p> <p>15 A. Yes.</p> <p>16 MR. SCHWINGLER: Okay. Is there any</p> <p>17 objection?</p> <p>18 MR. GERMAINE: That's fine. I just -- I</p> <p>19 have a question about what you mean by taxes</p> <p>20 and I've objected to that previously, but I</p> <p>21 don't think it's material here.</p> <p>22 MR. SCHWINGLER: Sure. All right.</p>	<p style="text-align: right;">73</p> <p>1 (Proceedings resumed at 10:39 a.m.)</p> <p>2 THE VIDEOGRAPHER: It's 10:39, we're</p> <p>3 back on the Record.</p> <p>4 BY MR. SCHWINGLER:</p> <p>5 Q. Mr. Wilson, before we proceed with the</p> <p>6 questions, during the break, I had a conversation</p> <p>7 with counsel for Publix and we discussed ways to</p> <p>8 streamline some of the questions on the</p> <p>9 transaction data. We had previously agreed to</p> <p>10 holding some discussions after this deposition to</p> <p>11 sort out different information that we may need</p> <p>12 from the transaction data and I think for the mine</p> <p>13 run of, in terms of going through these columns</p> <p>14 and categories that we've discussed, we'll pass</p> <p>15 through the remaining exhibits and sort of revisit</p> <p>16 those in discussions with counsel, if that's</p> <p>17 acceptable to Publix.</p> <p>18 MR. GERMAINE: Yeah, it's acceptable to</p> <p>19 us, Counsel.</p> <p>20 MR. SCHWINGLER: So I have a couple of</p> <p>21 transaction data questions that are sort of</p> <p>22 different from those types of issues.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 (Wilson 6 Received and Marked)</p> <p>2 BY MR. SCHWINGLER:</p> <p>3 Q. Mr. Wilson, we've handed you what's been</p> <p>4 marked as Exhibit 6. I'll represent to you that</p> <p>5 this exhibit is an excerpt of a print out of an</p> <p>6 excerpt taken from the Excel spreadsheet produced</p> <p>7 by Publix at Bates number PUB_EGGS_020483. And</p> <p>8 what was excerpted were the columns that you can</p> <p>9 see on the first page here for the item code</p> <p>10 13021037 from the dates July 16, 2004, through</p> <p>11 December 28th, 2007.</p> <p>12 So we can or, you know, certainly</p> <p>13 confirm later that the information in this exhibit</p> <p>14 is correct, but for, for purposes of my</p> <p>15 questioning, I'm representing that this, this is</p> <p>16 that data.</p> <p>17 Could you just review the columns at the</p> <p>18 top of the page and let me know once you've had a</p> <p>19 chance to do so?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Does the column reference date refer to</p> <p>22 the -- well, does the reference date column refer</p>	<p style="text-align: right;">76</p> <p>1 Q. And then the item cost column, would</p> <p>2 that be the cost of one package of the 30 dozen</p> <p>3 shell eggs that is referenced on this page?</p> <p>4 A. I wouldn't think so.</p> <p>5 Q. What would item cost mean to you?</p> <p>6 A. I would think that would mean the</p> <p>7 package. The 30 dozen.</p> <p>8 Q. Sorry. Let me clarify. So the item</p> <p>9 cost would be the cost of one unit of this</p> <p>10 product, right?</p> <p>11 A. Um, again, I wouldn't think, I wouldn't</p> <p>12 think one unit would cost \$15.60.</p> <p>13 Q. When I mean one unit, I mean a one</p> <p>14 30-dozen?</p> <p>15 A. Carton.</p> <p>16 Q. -- carton.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. So the item cost column refers to</p> <p>19 the price paid by Publix for one 30-dozen carton</p> <p>20 of this product.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And is the Egg Fresh carton white</p>
<p style="text-align: right;">75</p> <p>1 to the invoice date or the date the product was</p> <p>2 received by Publix?</p> <p>3 A. I don't know.</p> <p>4 Q. Don't know. The item code is, is that</p> <p>5 the same as you testified earlier, about what the</p> <p>6 term item code means?</p> <p>7 A. It doesn't look like it, no. I've never</p> <p>8 seen that item code before.</p> <p>9 Q. You've never seen item code 13021037?</p> <p>10 A. No, sir.</p> <p>11 Q. Under the column description, do you</p> <p>12 know what that means?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And what is that?</p> <p>15 A. The description of the product.</p> <p>16 Q. Okay. So this, this product is Egg</p> <p>17 Fresh cartoned white large 30 dozen; is that</p> <p>18 correct? Is that what the DZ means?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And under the vendor name, the vendor is</p> <p>21 Cal-Maine; is that correct?</p> <p>22 A. Yes, sir.</p>	<p style="text-align: right;">77</p> <p>1 large, is that a shell egg product?</p> <p>2 A. Again, I've never seen this item code</p> <p>3 before. I'm -- I, I would assume it is a shell</p> <p>4 egg.</p> <p>5 Q. Okay.</p> <p>6 A. This item code doesn't match up with</p> <p>7 anything in our system, so --</p> <p>8 MR. GERMAINE: Counsel, have we</p> <p>9 identified this to you in some way or</p> <p>10 described this file to you as associated with</p> <p>11 the business unit, do you know?</p> <p>12 MR. SCHWINGLER: Let me see.</p> <p>13 MR. GERMAINE: I have an idea I know</p> <p>14 what it is, but maybe we can work it out</p> <p>15 later if we need to, but --</p> <p>16 MR. SCHWINGLER: I have a feeling --</p> <p>17 yeah, this does come from the manufacturing</p> <p>18 business unit, so maybe this is for</p> <p>19 tomorrow's witness.</p> <p>20 MR. GERMAINE: It could be. I suspect</p> <p>21 it relates to some Morning Song business.</p> <p>22 MR. SCHWINGLER: Yeah.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 BY MR. SCHWINGLER:</p> <p>2 Q. Can you explain -- are you familiar with</p> <p>3 Morning Song?</p> <p>4 MR. GERMAINE: That's --</p> <p>5 A. No, sir.</p> <p>6 Q. You're not familiar with Morning Song?</p> <p>7 A. No, sir.</p> <p>8 Q. Morning Song would be for tomorrow's</p> <p>9 witness. So you're not -- you are not familiar</p> <p>10 with item code 1021037?</p> <p>11 A. No, sir.</p> <p>12 MR. SCHWINGLER: This is Exhibit 6?</p> <p>13 THE COURT REPORTER: That was, yes.</p> <p>14 MR. SCHWINGLER: Let me -- I'm going to</p> <p>15 set this aside for now. Mark this as the</p> <p>16 next exhibit in order, please.</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. Mr. Wilson, we've handed you what's been</p> <p>19 marked as Exhibit 7. Would you please review the</p> <p>20 column headings at the top of the page?</p> <p>21 (Wilson 7 Received and Marked)</p> <p>22 A. Yes, sir.</p>	<p style="text-align: right;">80</p> <p>1 Q. Okay. I'm going to ask you for -- can</p> <p>2 you go to the -- received date, does that mean the</p> <p>3 date that Publix received this product in its</p> <p>4 warehouse?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Earlier, with respect to Exhibit 2,</p> <p>7 you're free to look at Exhibit 2, you testified</p> <p>8 that received date refers to the date that Publix</p> <p>9 received the product at issue. Do you recall</p> <p>10 that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any reason to believe that</p> <p>13 the received date in this other spreadsheet would</p> <p>14 be anything other than the date on which Publix</p> <p>15 received the product?</p> <p>16 A. There's no PO numbers on this report,</p> <p>17 either, so --</p> <p>18 Q. Sure. It is a partial excerpt of just</p> <p>19 certain columns.</p> <p>20 A. There's no quantities or anything else.</p> <p>21 You can assume that.</p> <p>22 Q. Sure. Turning to the entry, the first</p>
<p style="text-align: right;">79</p> <p>1 BY MR. SCHWINGLER:</p> <p>2 Q. So Exhibit 7, I'll represent to you, is</p> <p>3 another excerpt. This one is taken from the Excel</p> <p>4 spreadsheet produced by Publix at PUB_EGGS_020502.</p> <p>5 And it's an excerpt of all entries for the item</p> <p>6 code 853987 from July 16th, 2004 until December</p> <p>7 28th, 2007. And it includes the columns that are</p> <p>8 visible on the page.</p> <p>9 Are you familiar with item code 853987?</p> <p>10 A. Yes.</p> <p>11 Q. What product is associated with that</p> <p>12 item code?</p> <p>13 A. Egg Beaters pint.</p> <p>14 Q. And Egg Beaters is a product produced by</p> <p>15 ConAgra; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And that's a retail liquid egg</p> <p>18 substitute, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And this particular product is a</p> <p>21 16-ounce product; is that correct?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">81</p> <p>1 entry on the first page for July 16th, 2004, under</p> <p>2 the received date column. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. The case cost column, does that refer to</p> <p>5 the cost that Publix paid for one case of this</p> <p>6 product?</p> <p>7 A. Yes.</p> <p>8 Q. So on July 16th, 2004, for the, for the</p> <p>9 shipment referred to under the received date of</p> <p>10 July 16th, 2004, Publix paid \$24.36 for a case of</p> <p>11 this product; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And if you can take a minute to look</p> <p>14 through, the document has just over 22 pages. And</p> <p>15 I -- if you just want to review the case cost</p> <p>16 column on those 22 pages and let me know once</p> <p>17 you've had a chance to do so.</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is it true that the case cost for every</p> <p>20 entry in this exhibit was \$24.36?</p> <p>21 A. Yes.</p> <p>22 MR. GERMAINE: Object to the form of the</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 question.</p> <p>2 BY MR. SCHWINGLER:</p> <p>3 Q. You've had a chance to review this</p> <p>4 entire document; is that correct? Have you had a</p> <p>5 chance to review the case cost column for this</p> <p>6 entire document; is that correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Would you agree that the number</p> <p>9 reflected in the case cost column is the same for</p> <p>10 every, every entry on this exhibit?</p> <p>11 MR. GERMAINE: Object to the form of the</p> <p>12 question. This is a date the excerpt was</p> <p>13 prepared by opposing counsel for purposes of</p> <p>14 the deposition, which has been edited in some</p> <p>15 way or another, so the authenticity of this</p> <p>16 document is in question. But to the extent</p> <p>17 you want the witness to read or interpret</p> <p>18 your own editing of this document, you can</p> <p>19 ask him that. But as for any other</p> <p>20 conclusions, I object.</p> <p>21 A. The columns match.</p> <p>22 BY MR. SCHWINGLER:</p>	<p style="text-align: right;">84</p> <p>1 December 27th, 2008?</p> <p>2 MR. GERMAINE: Objection to form.</p> <p>3 A. Assuming all the information in this</p> <p>4 document reflects the cost of the product, yes.</p> <p>5 BY MR. SCHWINGLER:</p> <p>6 Q. So we're not -- I mean, the data speaks</p> <p>7 for itself. The document speaks for itself.</p> <p>8 We're not trying to play any games. What -- I'm</p> <p>9 trying to understand what that means.</p> <p>10 So that does mean for a period of</p> <p>11 several years, every time Publix bought this</p> <p>12 specific product, it paid the same price for a</p> <p>13 case? Assuming this information is correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you happen to know whether</p> <p>16 this product was purchased on a fixed price</p> <p>17 contract?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you know who I could speak to to get</p> <p>20 that information?</p> <p>21 A. No, sir.</p> <p>22 Q. Who is in charge of negotiating with</p>
<p style="text-align: right;">83</p> <p>1 Q. So every column has the number \$24.36?</p> <p>2 A. Yes.</p> <p>3 Q. So assuming that this excerpt is</p> <p>4 accurate and correctly reflects the prices that</p> <p>5 Publix paid for this product on these dates, or</p> <p>6 for shipments corresponding to these dates, would</p> <p>7 you agree that the price for the Egg Beaters pint</p> <p>8 paid by Publix did not change between July 16th,</p> <p>9 2004 and December 27th, 2008?</p> <p>10 MR. GERMAINE: Objection.</p> <p>11 A. Are you saying according to this</p> <p>12 document? Is that what you're asking? According</p> <p>13 to this document?</p> <p>14 BY MR. SCHWINGLER:</p> <p>15 Q. Yeah. Assuming this document accurately</p> <p>16 reflects the transaction data produced by Publix</p> <p>17 and that none of the numbers are different -- we</p> <p>18 didn't change it around -- assuming that it's an</p> <p>19 accurate excerpt from Publix's transaction data,</p> <p>20 the question is, isn't it true that the price</p> <p>21 Publix paid for this product, Egg Beaters pint 16</p> <p>22 ounce, remained the same from July 16th, 2004 to</p>	<p style="text-align: right;">85</p> <p>1 ConAgra about the Egg Beaters product and the</p> <p>2 price that Publix paid for it from 2002 until</p> <p>3 December 31st of 2008?</p> <p>4 A. The buyer that was in charge of it at</p> <p>5 that time.</p> <p>6 Q. Yeah, who was the buyer that was in</p> <p>7 charge of this product?</p> <p>8 A. Bessie Foster.</p> <p>9 Q. Bessie Foster. Was she in charge of</p> <p>10 this product for the entire period from 2002 to</p> <p>11 2008?</p> <p>12 A. I took over in 2007.</p> <p>13 Q. To the best your knowledge, prior to --</p> <p>14 to when you took over from Ms. Foster, was Ms.</p> <p>15 Foster the buyer in charge of this Egg Beaters</p> <p>16 product on Exhibit 7 in 2002 until you took over?</p> <p>17 A. Yes.</p> <p>18 Q. You can set that aside.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Mr. Wilson, how does Publix's grocery</p> <p>21 business unit, just in a general sense, how does</p> <p>22 the Publix grocery unit choose its suppliers?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 A. In a general sense. Can you -- 2 Q. Does Publix have a, a standard procedure 3 for choosing suppliers across all product lines? 4 A. Well, you mean as far as reviewing 5 suppliers? 6 Q. I guess what I -- let me see if I can 7 rephrase. Publix sells a wide variety of 8 products; is that correct? 9 A. Yes. 10 Q. And it obtains those products from a 11 wide variety of suppliers, correct? 12 A. Yes. 13 Q. And there are different -- you've 14 testified that different people have 15 responsibility for different products; is that 16 correct? 17 A. Yes. 18 Q. So there's not one buyer buying every 19 product that goes into Publix stores. 20 A. No. 21 Q. My question is, given the wide range of 22 products that Publix sells and the wide range of</p>	<p style="text-align: right;">88</p> <p>1 gifts from vendors. 2 A. Yes, sir. 3 Q. Does Publix have a policy like that? 4 A. Yes. 5 Q. And that policy would apply to egg 6 buyers, just like it would apply to cereal buyers; 7 is that correct? 8 A. Yes. 9 Q. That's, that's what I'm aiming at. Are 10 there any other policies that apply to all buyers 11 that limit or govern how they would choose their 12 suppliers. 13 A. We cannot choose a supplier from gifts, 14 if that's what you're asking. 15 Q. That is one thing I'm asking. But are 16 there any other similar policies that govern how a 17 supplier can be chosen? 18 A. You have to have good business 19 practices. 20 Q. Do suppliers have to be approved through 21 some central administrative office or does -- is 22 the buyer allowed to choose the supplier?</p>
<p style="text-align: right;">87</p> <p>1 products that Publix needs to buy, does Publix 2 have a central policy that governs how it chooses 3 suppliers for various products? 4 A. Central policy? Like a mandate? 5 Q. Yes. 6 A. No, sir. 7 Q. So the way, the way egg suppliers are 8 chosen, for example, could have a different 9 procedure entirely than the way cereal is, cereal 10 suppliers are chosen? 11 A. It would be similar. 12 MR. GERMAINE: Objection to form. 13 A. It would be similar. It would still be 14 a Publix realm, but it would have to be different 15 because they are providing different products. 16 BY MR. SCHWINGLER: 17 Q. Does Publix have guidelines that limit 18 what its buyers can do when choosing suppliers? 19 A. Limits what its buyers can do when 20 choosing suppliers? 21 Q. Let me just give you an example. Some 22 companies have a policy that says you can't accept</p>	<p style="text-align: right;">89</p> <p>1 A. Yes. They do have to be approved 2 through other business units. 3 Q. So you had -- I think you testified 4 earlier that within the grocery retail unit, you 5 have a buyer and then you have the D -- 6 MR. GERMAINE: BDD. 7 BY MR. SCHWINGLER: 8 Q. BDD, the business -- 9 A. Development director. 10 Q. -- development director and that the 11 business development director supervises the 12 buyer; is that correct? 13 A. He supervises the category manager. 14 Q. Who then supervise the buyer? 15 A. Yes, sir. 16 Q. So with respect to eggs, who among those 17 three, buyer, category manager, business 18 development director, who has the final say in 19 which egg suppliers to use? 20 A. Final say would be the business 21 development director. 22 Q. And --</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 A. A lot of --</p> <p>2 Q. What role -- please finish.</p> <p>3 A. Along with other people in Publix. I</p> <p>4 mean, it's not just one person's decision.</p> <p>5 Q. So the business development director</p> <p>6 would need to get approval from others outside of</p> <p>7 that product line?</p> <p>8 MR. GERMAINE: Objection.</p> <p>9 BY MR. SCHWINGLER:</p> <p>10 Q. Who would the business development</p> <p>11 director consult with when deciding which supplier</p> <p>12 to use?</p> <p>13 A. MSP.</p> <p>14 Q. And I forgot what you had said that was.</p> <p>15 A. CQA.</p> <p>16 Q. CQA is the quality control?</p> <p>17 A. Yes, sir.</p> <p>18 Q. MSP was what?</p> <p>19 A. They're -- they, they're in charge of</p> <p>20 the Publix procurement side of it for private</p> <p>21 label products.</p> <p>22 Q. Does MSP have a set of standards for</p>	<p style="text-align: right;">92</p> <p>1 supplier?</p> <p>2 A. Yes.</p> <p>3 Q. That would be part of the process that</p> <p>4 Publix undertakes when deciding which suppliers to</p> <p>5 use?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How often does the grocery unit</p> <p>8 evaluate which egg suppliers to use?</p> <p>9 A. Not very often.</p> <p>10 Q. Does Publix have a policy that every X</p> <p>11 months or years, you have to review a supplier to</p> <p>12 reevaluate whether to continue using them?</p> <p>13 A. No, sir.</p> <p>14 Q. So what would cause Publix to reevaluate</p> <p>15 whether to continue using a certain shell egg</p> <p>16 supplier?</p> <p>17 A. Many different factors.</p> <p>18 Q. Can you -- would quality be a factor?</p> <p>19 A. Yes.</p> <p>20 Q. Reliability?</p> <p>21 A. Yes.</p> <p>22 Q. Would these answers be the same for egg</p>
<p style="text-align: right;">91</p> <p>1 suppliers that it requires Publix or the suppliers</p> <p>2 to meet before Publix will hire them?</p> <p>3 A. Yes.</p> <p>4 Q. Are those standards written?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do they apply to all products across</p> <p>7 the company?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And does CQA have a set of standards --</p> <p>10 withdrawn.</p> <p>11 Is it correct that CQA has standards for</p> <p>12 specific egg products or shell eggs that a</p> <p>13 supplier must meet before Publix will buy from</p> <p>14 that supplier?</p> <p>15 A. I'm sure they do.</p> <p>16 Q. Is there an auditing requirement?</p> <p>17 A. Yes, there is.</p> <p>18 Q. For safety requirements?</p> <p>19 A. Yes.</p> <p>20 Q. And does CQA get involved? Does CQA</p> <p>21 confirm that a supplier meets those requirements</p> <p>22 before Publix commits to buying eggs from that</p>	<p style="text-align: right;">93</p> <p>1 product suppliers?</p> <p>2 A. Yes.</p> <p>3 Q. Including or not, would it be the same</p> <p>4 for retail liquid egg substitute suppliers?</p> <p>5 A. Yes.</p> <p>6 Q. So there's not a, sort of a formal</p> <p>7 structure for reviewing them, but from time to</p> <p>8 time, Publix will review whether to change its</p> <p>9 shell egg suppliers?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And the same is true for its</p> <p>12 suppliers of retail liquid egg substitutes.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Does Publix sell, like, pre-made</p> <p>15 omelet mix or things like that?</p> <p>16 A. Egg Beaters has products in their liquid</p> <p>17 eggs.</p> <p>18 Q. They have an omelet type of product.</p> <p>19 That's a vague question, I understand. How do you</p> <p>20 describe sort of the range of products -- but</p> <p>21 there -- you can go into a Publix grocery store</p> <p>22 and buy a product that allows you to sort of open</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 the package, put it in the pan and you've got an</p> <p>2 omelet?</p> <p>3 MR. GERMAINE: Objection.</p> <p>4 A. There's, like, there's products in</p> <p>5 there, liquid eggs.</p> <p>6 BY MR. SCHWINGLER:</p> <p>7 Q. Okay. I mentioned earlier the idea of a</p> <p>8 pricing structure, which I defined as a, sort of a</p> <p>9 mechanism for determining the price. An example</p> <p>10 being a discount off of Urner Barry market price</p> <p>11 for a fixed price or a price that varies based on</p> <p>12 grain.</p> <p>13 And as to shell eggs, between 2002 and</p> <p>14 January 31st, 2008, did Publix ever purchase shell</p> <p>15 eggs on any basis other than the Urner Barry</p> <p>16 market price?</p> <p>17 A. Private label Publix brand eggs, no.</p> <p>18 Q. What about branded shell eggs?</p> <p>19 A. Yes.</p> <p>20 Q. And could you explain to me how Publix</p> <p>21 -- on what basis Publix purchased branded shell</p> <p>22 eggs?</p>	<p style="text-align: right;">96</p> <p>1 A. They provided the product at a cost and</p> <p>2 we paid for it.</p> <p>3 Q. And how did the -- how was the cost</p> <p>4 determined?</p> <p>5 A. They told us what they were charging for</p> <p>6 the product.</p> <p>7 Q. And when you say they, you're referring</p> <p>8 to the supplier --</p> <p>9 A. Yes.</p> <p>10 Q. -- of the branded shell egg?</p> <p>11 A. Yes.</p> <p>12 Q. For example, Eggland's Best.</p> <p>13 A. Yes.</p> <p>14 Q. How often would Publix and the supplier</p> <p>15 negotiate the cost of one of these fixed cost</p> <p>16 transactions?</p> <p>17 MR. GERMAINE: Objection to form.</p> <p>18 A. When they, when they adjusted the price.</p> <p>19 BY MR. SCHWINGLER:</p> <p>20 Q. How often?</p> <p>21 A. The cost --</p> <p>22 Q. How often would the supplier adjust the</p>
<p style="text-align: right;">95</p> <p>1 A. Fixed cost.</p> <p>2 Q. What do you mean by fixed cost?</p> <p>3 A. Cost per case.</p> <p>4 Q. And is that the cost of the supplier's</p> <p>5 cost?</p> <p>6 A. That's how much we paid for the product.</p> <p>7 Q. So you paid a fixed price per case?</p> <p>8 A. Fixed cost.</p> <p>9 Q. So can you explain to me what you mean</p> <p>10 by the term cost?</p> <p>11 A. How much we paid for the product.</p> <p>12 Q. How much Publix paid. So when you say</p> <p>13 we had a fixed cost contract, what you're saying</p> <p>14 is --</p> <p>15 MR. GERMAINE: He didn't say contract.</p> <p>16 A. I didn't say contract.</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. Oh, he didn't say contract?</p> <p>19 A. No, sir.</p> <p>20 Q. So what fixed -- how is the, the price</p> <p>21 Publix paid fixed? Under a fixed cost</p> <p>22 arrangement?</p>	<p style="text-align: right;">97</p> <p>1 cost?</p> <p>2 A. It was up to them. There was no set</p> <p>3 time frame as far as we were concerned.</p> <p>4 Q. So I'd just like to walk through one of</p> <p>5 these transactions for a branded shell egg that</p> <p>6 Publix purchased on what you described as a</p> <p>7 fixed-cost basis. Does -- just starting from</p> <p>8 point one, how is the process initiated? Does</p> <p>9 Publix place an order?</p> <p>10 A. You mean before we carry it? Before</p> <p>11 it's in our stores?</p> <p>12 Q. Sure. Let's go back to before it's in</p> <p>13 your stores.</p> <p>14 A. They would present the item to us and --</p> <p>15 ask for an appointment; present the item to us.</p> <p>16 Try to sell their product to us, obviously. They</p> <p>17 are sales people. And then we make a</p> <p>18 determination whether or not we wanted to buy the</p> <p>19 product and place it in our stores.</p> <p>20 Q. Okay. So Publix has now decided to buy</p> <p>21 the product and it's being offered on a fixed-cost</p> <p>22 basis. Does Publix then order a quantity of the</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 product?</p> <p>2 A. It's delivered straight to the store</p> <p>3 from the DSD supplier.</p> <p>4 Q. Based on the quantity that Publix</p> <p>5 ordered, correct?</p> <p>6 A. For each store.</p> <p>7 Q. For each store. Who has --</p> <p>8 A. We don't make a, we don't make a</p> <p>9 truckload order.</p> <p>10 Q. Does each store have a purchaser that</p> <p>11 determines the quantity that they will be getting?</p> <p>12 MR. GERMAINE: Objection.</p> <p>13 A. A person?</p> <p>14 BY MR. SCHWINGLER:</p> <p>15 Q. Let's say you've got 50 stores and you</p> <p>16 want to buy Egglard's Best for the 50 stores.</p> <p>17 Does each of the 50 stores have a buyer that</p> <p>18 places an order for a certain quantity of</p> <p>19 Egglard's Best or does it come through some, some</p> <p>20 other centralized process?</p> <p>21 MR. GERMAINE: Objection.</p> <p>22 A. An order is placed for the product</p>	<p style="text-align: right;">100</p> <p>1 system that orders the products for the stores off</p> <p>2 of supply and demand.</p> <p>3 Q. Okay. So there's one order or a central</p> <p>4 order going to the supplier from Publix. And then</p> <p>5 the supplier has to send the eggs to the</p> <p>6 individual stores that are part -- included in the</p> <p>7 order.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. When that order goes out, how is</p> <p>10 the price for that order, for that order</p> <p>11 determined?</p> <p>12 A. For branded eggs?</p> <p>13 Q. Yeah. For Egglard's Best?</p> <p>14 A. The cost that they supplied us.</p> <p>15 Q. So they've already told you what the</p> <p>16 price would be in advance.</p> <p>17 A. It's a fixed cost.</p> <p>18 Q. And -- but so, before the order goes</p> <p>19 out, Publix knows what that -- the cost will be</p> <p>20 for each unit.</p> <p>21 A. For the branded eggs.</p> <p>22 Q. Is that, is that correct?</p>
<p style="text-align: right;">99</p> <p>1 through the stores.</p> <p>2 BY MR. SCHWINGLER:</p> <p>3 Q. Who places the order?</p> <p>4 A. From 2002 to 2008, is that the time</p> <p>5 frame you're talking about?</p> <p>6 Q. Sure. Yeah.</p> <p>7 A. Um --</p> <p>8 MR. GERMAINE: You're talking about the</p> <p>9 literal function of placing the order?</p> <p>10 MR. SCHWINGLER: Yeah. I'm trying to</p> <p>11 understand the mechanics of how --</p> <p>12 A. How the product gets to the --</p> <p>13 BY MR. SCHWINGLER:</p> <p>14 Q. How the product gets to the, to the</p> <p>15 stores and who's making the decisions along the</p> <p>16 lines. So who orders the Egglard's Best eggs,</p> <p>17 let's say 2003 time frame?</p> <p>18 A. A computer program.</p> <p>19 Q. And is that computer program, does each</p> <p>20 individual store have its own computer that makes</p> <p>21 its own order?</p> <p>22 A. There's a central, there's a central</p>	<p style="text-align: right;">101</p> <p>1 A. Yes.</p> <p>2 Q. When is that cost communicated to</p> <p>3 Publix?</p> <p>4 A. As before, when they brought the product</p> <p>5 in to show us.</p> <p>6 Q. So the first time they sell you the</p> <p>7 product, that's when they tell you what the fixed</p> <p>8 cost will be?</p> <p>9 A. Yes.</p> <p>10 Q. And then does that ever change? Does</p> <p>11 the cost ever change?</p> <p>12 A. Um, it could.</p> <p>13 Q. And when, when -- how does the cost --</p> <p>14 explain to me how the, how the supplier and Publix</p> <p>15 would change the cost.</p> <p>16 A. If they bring a cost increase or a</p> <p>17 decrease to us.</p> <p>18 Q. So they would communicate -- the</p> <p>19 supplier would communicate to Publix that the</p> <p>20 price is going up or down?</p> <p>21 A. Yes.</p> <p>22 Q. And they would tell you what the new</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 price is?</p> <p>2 A. The new cost to us, yes.</p> <p>3 Q. Yes. The price that Publix paid to the</p> <p>4 supplier for that product.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then that would be the price</p> <p>7 until you heard from them another time about a</p> <p>8 price change.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did Publix ever push back on the</p> <p>11 price being charged for Eggland's Best?</p> <p>12 A. For branded eggs in general, yes.</p> <p>13 Q. So you didn't have to necessarily accept</p> <p>14 the cost that the supplier imposed. There was</p> <p>15 some negotiation, correct?</p> <p>16 A. We can always delete an item if we chose</p> <p>17 to. There's always -- yes.</p> <p>18 Q. So they weren't free to charge whatever</p> <p>19 they wanted.</p> <p>20 MR. GERMAINE: Objection to form.</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. So the suppliers of the branded shell</p>	<p style="text-align: right;">104</p> <p>1 Q. Yeah.</p> <p>2 A. I didn't mention a contract, no, sir.</p> <p>3 Q. I thought I heard you testify, and I</p> <p>4 could be mistaken, that there is not a contract.</p> <p>5 A. I never mentioned a contract.</p> <p>6 Q. Okay. Is there -- is there a -- does</p> <p>7 Publix enter into contracts for the purchase of</p> <p>8 branded shell eggs?</p> <p>9 A. No, sir.</p> <p>10 Q. Just to sort of close the loop on this,</p> <p>11 you testified, I think earlier, that Publix</p> <p>12 currently purchases its own branded shell eggs</p> <p>13 from two suppliers.</p> <p>14 A. Yes.</p> <p>15 Q. That was Cal-Maine and Country Charm?</p> <p>16 A. Yes.</p> <p>17 Q. From 2002 to the end of 2008, did Publix</p> <p>18 purchase shell eggs for its own brand from any</p> <p>19 other suppliers?</p> <p>20 A. Yes.</p> <p>21 Q. Can you give me some examples?</p> <p>22 A. Tampa Farms.</p>
<p style="text-align: right;">103</p> <p>1 eggs were not free to charge Publix whatever they</p> <p>2 wanted, because Publix didn't have to buy from</p> <p>3 them, correct?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 A. If we wanted the product, we had to pay</p> <p>6 what they asked.</p> <p>7 BY MR. SCHWINGLER:</p> <p>8 Q. You were free to decline the product at</p> <p>9 the price offered, correct?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 A. We had to purchase the product at the</p> <p>12 cost that they offered us if we wanted the</p> <p>13 product.</p> <p>14 BY MR. SCHWINGLER:</p> <p>15 Q. If you wanted it. And if you didn't</p> <p>16 want the product, then you wouldn't buy it,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Were there -- all right. But I think</p> <p>20 you said before, there was no contract governing</p> <p>21 these transactions, right?</p> <p>22 A. For branded eggs?</p>	<p style="text-align: right;">105</p> <p>1 Q. Tampa Farms. And when did --</p> <p>2 approximately what timeline, time frame did</p> <p>3 Publix -- during which time frame did Publix buy</p> <p>4 shell eggs from Tampa Farms?</p> <p>5 A. Which time frame? Um, 2002 until Tampa</p> <p>6 Farms sold to Cal-Maine.</p> <p>7 Q. Prior to that end point in time, did</p> <p>8 Publix purchase shell eggs from Cal-Maine?</p> <p>9 A. Prior to that?</p> <p>10 Q. Before Tampa Farms was sold to</p> <p>11 Cal-Maine, did -- had Publix already been</p> <p>12 purchasing eggs from Cal-Maine at that time?</p> <p>13 A. Yes.</p> <p>14 Q. Is that the same true for Country Charm?</p> <p>15 A. Yes.</p> <p>16 Q. Apart from when Tampa Farms was sold to</p> <p>17 Cal-Maine, did Publix have any other significant</p> <p>18 changes in shell egg suppliers between 2002 and</p> <p>19 the end of 2008?</p> <p>20 MR. GERMAINE: Objection to form.</p> <p>21 A. I'm not sure.</p> <p>22 BY MR. SCHWINGLER:</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

28 (Pages 106 to 109)

<p style="text-align: right;">106</p> <p>1 Q. When I say significant, I would mean --</p> <p>2 I would refer to a supplier that sells a large</p> <p>3 volume of shell eggs to Publix. For example,</p> <p>4 Cal-Maine and Country Charm. Were there any shell</p> <p>5 egg suppliers that sold a comparable volume of</p> <p>6 shell eggs to Publix between 2002 and the end of</p> <p>7 2008 that Publix no longer buys from?</p> <p>8 A. Hillendale Farms provided Publix with</p> <p>9 eggs and they sold out to Cal-Maine also.</p> <p>10 Q. And did Publix continue to buy from</p> <p>11 Hillendale up to the point --</p> <p>12 A. That they sold --</p> <p>13 Q. -- that they sold to Cal-Maine?</p> <p>14 A. Yes.</p> <p>15 Q. They did. Were there any other, apart</p> <p>16 from Tampa Farms, Hillendale, Cal-Maine and</p> <p>17 Country Charm, any other major suppliers of shell</p> <p>18 eggs to Publix between 2002 and the end of 2008?</p> <p>19 A. No, sir.</p> <p>20 MR. SCHWINGLER: What exhibit are we on?</p> <p>21 THE COURT REPORTER: 8.</p> <p>22 (Wilson 8 Received and Marked)</p>	<p style="text-align: right;">108</p> <p>1 A. Yes, sir.</p> <p>2 Q. You did. If you could turn to page 5.</p> <p>3 And I'll direct you to the -- halfway through the</p> <p>4 first paragraph. There's a passage that says:</p> <p>5 "Similarly, for plaintiff's grocery business unit,</p> <p>6 the prices of the Publix brand eggs and egg</p> <p>7 products this business unit purchased from</p> <p>8 Defendants and other suppliers over the relevant</p> <p>9 period, were determined by a negotiated discount</p> <p>10 off of the prevailing Urner Barry price quotation</p> <p>11 for the subject product and region. The discount</p> <p>12 was arrived at through Publix's category review</p> <p>13 process."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Can you explain to me what Publix's</p> <p>17 category review process refers to?</p> <p>18 A. That's where MSP goes out to find the</p> <p>19 suppliers we talked about.</p> <p>20 Q. And can you, just in a little bit more</p> <p>21 detail, how often does Publix have a category</p> <p>22 review process?</p>
<p style="text-align: right;">107</p> <p>1 BY MR. SCHWINGLER:</p> <p>2 Q. Mr. Wilson, I've handed you what's been</p> <p>3 marked as Exhibit 8. If you would -- want to just</p> <p>4 take a moment to briefly review the document, I</p> <p>5 will, will direct you to more specific locations.</p> <p>6 But if you just want to take a look at it and</p> <p>7 familiarize yourself with it generally. Let me</p> <p>8 know when you've had a chance to do so.</p> <p>9 A. Yes, sir.</p> <p>10 Q. Mr. Wilson, do you recognize this</p> <p>11 document?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And is this document Publix's</p> <p>14 Supplemental Objections and Answers to Defendant's</p> <p>15 First Set of Interrogatories?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did you participate in the preparation</p> <p>18 of Publix's supplemental objections and answers?</p> <p>19 A. We relied on our counsel.</p> <p>20 Q. Sure, but did you provide information</p> <p>21 regarding the subject matter of these</p> <p>22 interrogatories that were used in these answers?</p>	<p style="text-align: right;">109</p> <p>1 A. We talked about it earlier. There's no</p> <p>2 set time frame.</p> <p>3 Q. I'm sorry, I didn't catch the last --</p> <p>4 A. There's no set time line.</p> <p>5 Q. What would lead Publix to hold a</p> <p>6 category review?</p> <p>7 A. As earlier, product supply and quality.</p> <p>8 Q. Just generally speaking, can you</p> <p>9 describe how the category review process works?</p> <p>10 A. Um, MSP sends out a questionnaire.</p> <p>11 Q. And who does MSP send the questionnaire</p> <p>12 to?</p> <p>13 A. Suppliers.</p> <p>14 Q. Suppliers. Does MSP send a</p> <p>15 questionnaire to current suppliers or which -- how</p> <p>16 does MSP determine which suppliers to send the</p> <p>17 questionnaire to?</p> <p>18 A. The suppliers come to us.</p> <p>19 Q. How do they -- how would the -- does</p> <p>20 Publix publish that it will be holding a category</p> <p>21 review?</p> <p>22 A. The suppliers do a registration of</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

29 (Pages 110 to 113)

<p style="text-align: right;">110</p> <p>1 interest.</p> <p>2 Q. What's a registration of interest?</p> <p>3 A. A registration that they are interested</p> <p>4 in being a supplier.</p> <p>5 Q. Is it something that Publix requires for</p> <p>6 all egg suppliers?</p> <p>7 A. No. The suppliers do this to be a</p> <p>8 supplier for Publix potentially.</p> <p>9 Q. So that's the way a supplier</p> <p>10 communicates to Publix that it's interested in</p> <p>11 selling eggs to Publix.</p> <p>12 A. Yes.</p> <p>13 Q. So the first step in the category review</p> <p>14 is that MSP sends out a -- what does MSP send to</p> <p>15 the suppliers to initiate this process?</p> <p>16 A. A questionnaire.</p> <p>17 Q. A questionnaire. What, generally, would</p> <p>18 the questionnaire ask?</p> <p>19 A. Questions about their business</p> <p>20 practices.</p> <p>21 Q. And then I assume the suppliers would</p> <p>22 then respond to the questionnaire if they were</p>	<p style="text-align: right;">112</p> <p>1 all the information, relevant information from</p> <p>2 them.</p> <p>3 Q. Okay. And at what point -- is the</p> <p>4 decision then just made based on further</p> <p>5 evaluation or are there other, um -- withdrawn.</p> <p>6 Does Publix send requests for more</p> <p>7 information to those suppliers at that point?</p> <p>8 A. Um, that's an MSP process, so -- I'm not</p> <p>9 sure if they -- I don't know.</p> <p>10 Q. Okay. Ultimately, I'll probably circle</p> <p>11 back to this category review process later when</p> <p>12 I've got the benefit of some documents, but is</p> <p>13 there eventually an auction held to determine who</p> <p>14 wins the business?</p> <p>15 A. On eggs, I don't believe so.</p> <p>16 Q. Okay. If you want to turn to, let's</p> <p>17 see. Page 7. The first full paragraph, there's a</p> <p>18 sentence starting with "however". It says:</p> <p>19 However, Plaintiff's grocery business unit</p> <p>20 purchased national brand eggs and egg products and</p> <p>21 specialty eggs based on a fixed vendor price</p> <p>22 list."</p>
<p style="text-align: right;">111</p> <p>1 interested in the business?</p> <p>2 A. Yes.</p> <p>3 Q. What's the next step in the category</p> <p>4 review process once the responses come in from the</p> <p>5 suppliers?</p> <p>6 A. Um, MSP looks at the different suppliers</p> <p>7 to see if they are truly capable of becoming</p> <p>8 suppliers or not.</p> <p>9 Q. Does MSP then whittle down the list or</p> <p>10 choose suppliers based on the responses for</p> <p>11 further evaluation?</p> <p>12 A. Yes.</p> <p>13 Q. And can you explain then the next step</p> <p>14 in that process?</p> <p>15 A. You just did.</p> <p>16 (Laughter)</p> <p>17 Q. So MSP, MSP, based on the response,</p> <p>18 determines a group of suppliers that advance to</p> <p>19 the next round?</p> <p>20 A. Yes.</p> <p>21 Q. And what is the next round?</p> <p>22 A. Um, MSP continues evaluating them; gets</p>	<p style="text-align: right;">113</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And can you explain to me what a fixed</p> <p>4 vendor price list is?</p> <p>5 A. The fixed cost.</p> <p>6 Q. So is this -- this is referring to what</p> <p>7 you testified to earlier about the</p> <p>8 fixed-cost-based purchases?</p> <p>9 A. Yes.</p> <p>10 Q. And so, these are, these are</p> <p>11 transactions that are not tied to the Urner Barry</p> <p>12 price for eggs, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And when you say national brand eggs,</p> <p>15 are you referring to Eggland's Best?</p> <p>16 A. That would be one.</p> <p>17 Q. Are there any other national brand eggs</p> <p>18 that you're aware of that would be purchased in</p> <p>19 this way?</p> <p>20 A. Davidson's.</p> <p>21 Q. Davidson's? What does Davidson's sell</p> <p>22 or what -- is it a, a shell egg?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

30 (Pages 114 to 117)

<p style="text-align: right;">114</p> <p>1 A. Yes.</p> <p>2 Q. Is it organic?</p> <p>3 A. No.</p> <p>4 Q. Anything, any other national brand eggs</p> <p>5 other than Eggland's Best and Davidson's?</p> <p>6 A. Country Hen.</p> <p>7 Q. Country Hen. Any others?</p> <p>8 A. I guess you could count Four Grain as a</p> <p>9 national brand.</p> <p>10 Q. What is Four Grain? Is that a --</p> <p>11 A. It's a branded egg.</p> <p>12 Q. Is it a -- is it considered a specialty</p> <p>13 egg?</p> <p>14 A. Yes.</p> <p>15 Q. Would you agree that ConAgra Egg Beater</p> <p>16 products were sold to Publix based on a fixed</p> <p>17 vendor price list?</p> <p>18 A. Yes.</p> <p>19 Q. What about, when Publix purchased the</p> <p>20 Publix brand retail liquid egg substitutes -- can</p> <p>21 I just call it private label liquid? Do you</p> <p>22 understand what I mean by that?</p>	<p style="text-align: right;">116</p> <p>1 Q. Was that true for all private label</p> <p>2 liquid eggs that Publix purchased from 2002 to the</p> <p>3 end of 2008?</p> <p>4 A. For the grocery unit, yes.</p> <p>5 Q. And is that still true today?</p> <p>6 A. Yes.</p> <p>7 Q. And the response here on page 7 refers</p> <p>8 to specialty eggs. Can you describe what you mean</p> <p>9 by specialty eggs?</p> <p>10 A. Eggland's best. You said it earlier</p> <p>11 when you said Four Grain.</p> <p>12 Q. Four Grain. So these are shell eggs</p> <p>13 that have different characteristics than a</p> <p>14 conventional shell egg?</p> <p>15 MR. GERMAINE: Objection.</p> <p>16 A. Um, different characteristics.</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. What makes Eggland's Best a specialty</p> <p>19 egg?</p> <p>20 A. The claims that the manufacturer --</p> <p>21 that's all.</p> <p>22 Q. And those claims -- what do those claims</p>
<p style="text-align: right;">115</p> <p>1 A. Yes.</p> <p>2 Q. So when Publix purchased private label</p> <p>3 liquid, by which I mean the Publix branded retail</p> <p>4 liquid egg substitutes, did Publix purchase those</p> <p>5 eggs on a market basis?</p> <p>6 A. Yes.</p> <p>7 Q. Can you just describe what an example of</p> <p>8 trans-- would it be a -- would Publix purchase its</p> <p>9 private label liquid on a discount off of the</p> <p>10 Urner Barry market?</p> <p>11 A. No.</p> <p>12 Q. No. How would the price be determined</p> <p>13 that Publix paid to the supplier for the private</p> <p>14 label liquid?</p> <p>15 A. There was a Urner Barry liquid price a</p> <p>16 monthly average, basically, with an upcharge for</p> <p>17 them to produce it.</p> <p>18 Q. So the price would vary from month to</p> <p>19 month?</p> <p>20 A. Yes.</p> <p>21 Q. Based on the average Urner Barry index?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">117</p> <p>1 relate to?</p> <p>2 A. Cholesterol. Heart health.</p> <p>3 Q. Okay. You can set 8 aside, although I'd</p> <p>4 keep it close by. I may be returning back to it.</p> <p>5 I'm sorry, please -- keep it and stay on page 7.</p> <p>6 You testified earlier that Publix</p> <p>7 purchased sort of national brand retail liquid egg</p> <p>8 substitutes like Egg Beaters; is that correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And is it correct that Publix did not</p> <p>11 purchase those products off of the Urner Barry</p> <p>12 market?</p> <p>13 A. Correct.</p> <p>14 Q. The branded -- the national brand retail</p> <p>15 liquid egg substitutes were purchased off of a</p> <p>16 fixed vendor price list; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. All right. So just so my understanding</p> <p>19 is correct, you're not familiar with Morning Song</p> <p>20 eggs, are you?</p> <p>21 A. No, sir.</p> <p>22 Q. Or Morning Song? And you're not --</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

31 (Pages 118 to 121)

<p style="text-align: right;">118</p> <p>1 A. No, sir.</p> <p>2 Q. -- prepared to testify about Morning</p> <p>3 Song, correct?</p> <p>4 A. No, sir.</p> <p>5 Q. Turning back to shell egg purchases more</p> <p>6 generally, I understand, and we've got to be</p> <p>7 clear, that you have the Publix branded eggs that</p> <p>8 you purchased off of the Urner Barry market,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then you have some of the national</p> <p>12 branded shell eggs that you purchased off of a</p> <p>13 fixed vendor price list --</p> <p>14 A. Yes.</p> <p>15 Q. -- correct? For the Publix branded</p> <p>16 shell eggs, did Publix have a competitive bidding</p> <p>17 system to determine which suppliers to use and how</p> <p>18 much to pay?</p> <p>19 A. MSP, whenever they submitted their cost</p> <p>20 to us.</p> <p>21 Q. When you say MSP, whenever they</p> <p>22 submitted their cost to us, can you explain what</p>	<p style="text-align: right;">120</p> <p>1 are UEP certified.</p> <p>2 Q. So when -- so let me put it another way.</p> <p>3 Does Publix require UEP certification before it</p> <p>4 will consider a bid from an egg supplier?</p> <p>5 A. Um, no, sir.</p> <p>6 Q. Would your answers be the same for</p> <p>7 Publix branded private label liquid?</p> <p>8 A. In terms of the competitive bidding</p> <p>9 process?</p> <p>10 Q. Let me withdraw the question. Does</p> <p>11 Publix have a category review process for private</p> <p>12 label liquid?</p> <p>13 A. Yes.</p> <p>14 Q. And as part of that category review</p> <p>15 process, does Publix solicit bids from suppliers</p> <p>16 of private label liquid?</p> <p>17 A. Yes.</p> <p>18 Q. And does Publix determine which</p> <p>19 suppliers to include in that process using the</p> <p>20 written questionnaire responses that it received</p> <p>21 as a result of the, the MSP sending out the</p> <p>22 questionnaire?</p>
<p style="text-align: right;">119</p> <p>1 you mean?</p> <p>2 A. Whenever they did the supplier review.</p> <p>3 Q. MSP would hold a supplier review and as</p> <p>4 part of that review, MSP would solicit bids for</p> <p>5 different products; is that correct?</p> <p>6 A. You're talking about for eggs, right?</p> <p>7 Q. Sure. Yep.</p> <p>8 A. Yes, sir.</p> <p>9 Q. So we've already covered how Publix</p> <p>10 decides which suppliers to solicit bids from.</p> <p>11 That's the first step of the category review; is</p> <p>12 that right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. With the written questionnaire? Does</p> <p>15 Publix -- are you familiar with the term UEP</p> <p>16 certified?</p> <p>17 A. Yes.</p> <p>18 Q. Does Publix only solicit bids for shell</p> <p>19 eggs from UEP certified companies?</p> <p>20 A. By default, yes.</p> <p>21 Q. What do you mean by, by default?</p> <p>22 A. Ninety-seven percent of the companies</p>	<p style="text-align: right;">121</p> <p>1 A. Yes, we use the questionnaire.</p> <p>2 Q. Okay. So the process for choosing the</p> <p>3 Publix branded shell egg suppliers and the Publix</p> <p>4 branded private label liquid suppliers is</p> <p>5 generally the same in terms of you send out a</p> <p>6 questionnaire, you get the response, then you</p> <p>7 solicit bids from the suppliers that you like.</p> <p>8 A. Yes.</p> <p>9 MR. GERMAINE: Objection.</p> <p>10 BY MR. SCHWINGLER:</p> <p>11 Q. From the -- let me rephrase. Once</p> <p>12 you've gotten the written responses from the</p> <p>13 questionnaire for PL, private label liquid, Publix</p> <p>14 determines which suppliers to then contact for a</p> <p>15 bid; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 MR. SCHWINGLER: Is this 9?</p> <p>19 THE COURT REPORTER: Mm-hmm.</p> <p>20 (Wilson 9 Received and Marked)</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. Mr. Wilson, I've handed you what's been</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

32 (Pages 122 to 125)

<p style="text-align: right;">122</p> <p>1 marked as Exhibit 9, which is a document bearing</p> <p>2 the Bates range PUB_EGGS_006998 through 007024.</p> <p>3 You're free to review as much of the document as</p> <p>4 you need to. I will direct you to some specific</p> <p>5 pages so, so I may direct your attention to, to</p> <p>6 the page bearing the Bates number 007005. And at</p> <p>7 the top of the page, it says "Publix brand eggs</p> <p>8 vendor requirements". Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Are you familiar with this document?</p> <p>11 A. It's the first time I've seen it.</p> <p>12 Q. Are you familiar -- have you seen</p> <p>13 documents that, you know, generally look like</p> <p>14 this?</p> <p>15 MR. GERMAINE: Are you talking about the</p> <p>16 whole document or just the one page?</p> <p>17 MR. SCHWINGLER: Well, I guess we're a</p> <p>18 little unclear, based on the way it was</p> <p>19 produced, sort of whether there's multiple</p> <p>20 pages to this document. Let me see if I can</p> <p>21 get some --</p> <p>22 BY MR. SCHWINGLER:</p>	<p style="text-align: right;">124</p> <p>1 A. He worked in MSP.</p> <p>2 Q. He did. Was he responsible for eggs,</p> <p>3 shell eggs? Shell egg -- was Steve Hicks involved</p> <p>4 in the decision to purchase shell eggs from</p> <p>5 different suppliers?</p> <p>6 A. Um, if he sent out this document from</p> <p>7 MSP, then he was in -- he was the one in charge of</p> <p>8 the category review for shell eggs.</p> <p>9 Q. For shell eggs. Okay. So what my</p> <p>10 understanding of this e-mail is that whoever</p> <p>11 received this e-mail, presumably a supplier or a</p> <p>12 set of suppliers, they've returned some sort of</p> <p>13 written questionnaire and now they are being</p> <p>14 invited to submit quotations. Would this be an</p> <p>15 example of sort of that, the next phase of</p> <p>16 soliciting competitive bids that you discussed</p> <p>17 earlier?</p> <p>18 A. Um, I would assume.</p> <p>19 Q. Okay. So if you turn two pages to the</p> <p>20 page bearing the Bates range 007004. It's titled</p> <p>21 "Publix Brand Category Review" and then has the</p> <p>22 words "Eggs" underneath. Do you see that?</p>
<p style="text-align: right;">123</p> <p>1 Q. So if you flip back to the page</p> <p>2 beginning with 007002.</p> <p>3 A. Okay.</p> <p>4 Q. Okay. And this is what appears to be an</p> <p>5 e-mail and it has the name Steve Hicks at the top</p> <p>6 in the left corner. Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And if you read the first two sentences</p> <p>9 after good afternoon, the first two sentences of</p> <p>10 the first full paragraph: "Thank you for</p> <p>11 returning our category questionnaire. Moving into</p> <p>12 the next phase of the review, you are now invited</p> <p>13 to submit quotations for Publix brand eggs." Do</p> <p>14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Would this e-mail be an example of the</p> <p>17 category review process?</p> <p>18 A. From MSP?</p> <p>19 Q. From MSP, sure.</p> <p>20 A. Um, I'm assuming it would. Just this is</p> <p>21 a document from Steve Hicks.</p> <p>22 Q. And who is Steve Hicks?</p>	<p style="text-align: right;">125</p> <p>1 A. Yes.</p> <p>2 Q. And then it says "Auction and Activity</p> <p>3 Schedule". Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it has a number of activities</p> <p>6 listed. The first one is initial quotations due.</p> <p>7 Do you see that?</p> <p>8 A. Yep.</p> <p>9 Q. Then it says connectivity exercise?</p> <p>10 A. Yes.</p> <p>11 Q. Are you familiar with what the term</p> <p>12 connectivity exercise means?</p> <p>13 A. No, sir.</p> <p>14 Q. If you go down a few more rows, you see</p> <p>15 the term mock auction?</p> <p>16 A. Yes.</p> <p>17 Q. Are you familiar with that term?</p> <p>18 A. No.</p> <p>19 Q. And then the next row down it says live</p> <p>20 auction. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Are you familiar with the term "live</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

33 (Pages 126 to 129)

<p style="text-align: right;">126</p> <p>1 auction"?</p> <p>2 A. No, sir.</p> <p>3 Q. So you -- you're not aware of whether</p> <p>4 Publix held live auctions to determine the -- from</p> <p>5 whom Publix would buy shell eggs.</p> <p>6 A. To my understanding, we did not.</p> <p>7 Q. Okay. So turning back to the page</p> <p>8 bearing the number 7005. Is it your testimony</p> <p>9 that you're not familiar with this document?</p> <p>10 A. I am now. It's in front of me.</p> <p>11 Q. Are you able to testify about the</p> <p>12 various vendor requirements that are listed on</p> <p>13 this document?</p> <p>14 A. An example of a vendor requirement would</p> <p>15 be --</p> <p>16 MR. GERMAINE: It's the title here.</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. Well, for example, at the top of the</p> <p>19 page, it says payment terms and then says: "All</p> <p>20 prices to include direct store delivery cost for</p> <p>21 two to three deliveries per week to stores</p> <p>22 designated by the supplier on the store locator</p>	<p style="text-align: right;">128</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you see the third bullet point says:</p> <p>3 "The selected vendor's products will meet the</p> <p>4 specifications established for Publix brand</p> <p>5 products. Publix reserves the right to refuse any</p> <p>6 product that does not meet or exceed the standards</p> <p>7 established, of the established NRB."</p> <p>8 What does NRB stand for, if you know?</p> <p>9 A. National retail brand.</p> <p>10 Q. So is it Publix's policy that its store</p> <p>11 brand products had to meet or exceed the standards</p> <p>12 of a comparable national brand?</p> <p>13 A. Yes.</p> <p>14 Q. So for example, for private label egg,</p> <p>15 was it Publix's policy that the liquid egg it was</p> <p>16 buying had to meet or exceed the standards of</p> <p>17 ConAgra Egg Beaters?</p> <p>18 A. Yes.</p> <p>19 Q. And was the subject to negotiation or</p> <p>20 was this something the supplier had to live with?</p> <p>21 A. Something they had to live with.</p> <p>22 Q. Okay. To your knowledge, are all of</p>
<p style="text-align: right;">127</p> <p>1 sheet."</p> <p>2 A. Yes.</p> <p>3 Q. Are you familiar with that -- is it your</p> <p>4 understanding that Publix required its vendors,</p> <p>5 when soliciting or when submitting bids, to base</p> <p>6 the prices off of a two to three delivery-per-week</p> <p>7 term?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Do you have any understanding,</p> <p>10 other than this document in front of you, that</p> <p>11 Publix required that of its suppliers?</p> <p>12 A. That's our program.</p> <p>13 Q. It is?</p> <p>14 A. Yes.</p> <p>15 Q. Does Publix always require net 14 days</p> <p>16 for invoicing?</p> <p>17 A. On eggs?</p> <p>18 Q. Yes.</p> <p>19 A. As of this document, obviously we did.</p> <p>20 Q. Okay. Down under the heading quality</p> <p>21 assurance, do you see the four bullet points that</p> <p>22 are listed there?</p>	<p style="text-align: right;">129</p> <p>1 these vendor requirements listed on this page</p> <p>2 nonnegotiable?</p> <p>3 MR. GERMAINE: Objection to form.</p> <p>4 A. Yes.</p> <p>5 BY MR. SCHWINGLER:</p> <p>6 Q. So put another way, for each of the</p> <p>7 requirements listed on this page -- withdrawn. So</p> <p>8 put another way, each of the vendor requirements</p> <p>9 listed on this document is non-negotiable?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 A. Um, you're speaking in absolutes. Yes.</p> <p>12 BY MR. SCHWINGLER:</p> <p>13 Q. Yes. Okay. You can set that aside.</p> <p>14 A. Do we still need 8?</p> <p>15 Q. You know, you can set them aside. If we</p> <p>16 need to pull it later, we can do so.</p> <p>17 MR. GERMAINE: We've been going about an</p> <p>18 hour or so. Do you want to try and go a</p> <p>19 little bit longer and then break for lunch or</p> <p>20 how do you feel?</p> <p>21 MR. RAYLE: That's fine.</p> <p>22 MR. GERMAINE: Okay. Is that okay with</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

34 (Pages 130 to 133)

<p style="text-align: right;">130</p> <p>1 you, Counsel?</p> <p>2 MR. SCHWINGLER: What was that?</p> <p>3 MR. GERMAINE: Just go for a little</p> <p>4 while longer and break for lunch at a</p> <p>5 convenient place. We've hit an hour, so I</p> <p>6 was just giving the witness an opportunity --</p> <p>7 MR. SCHWINGLER: Yeah. No, that's fine.</p> <p>8 Just let me know whenever. I think we'll --</p> <p>9 it will be a while until there's a logical</p> <p>10 stopping point where we can stop. It doesn't</p> <p>11 matter.</p> <p>12 MR. GERMAINE: Okay.</p> <p>13 MR. SCHWINGLER: What exhibit number is</p> <p>14 this?</p> <p>15 THE COURT REPORTER: 10.</p> <p>16 (Wilson 10 Received and Marked)</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. Mr. Wilson, we've handed you what's been</p> <p>19 marked as Exhibit 10, which is a document bearing</p> <p>20 the Bates range PUB_EGGS_008209 and continues</p> <p>21 until 008230. Once again, you're free to read as</p> <p>22 much of this as you feel you need to in order to</p>	<p style="text-align: right;">132</p> <p>1 Q. It also appears on this page. Is your</p> <p>2 answer the same? Are you familiar with the phrase</p> <p>3 "connectivity exercise" on this document?</p> <p>4 A. No.</p> <p>5 Q. How about the phrase "mock auction"?</p> <p>6 Are you familiar with that?</p> <p>7 A. No.</p> <p>8 Q. Are you familiar with the phrase "live</p> <p>9 auction"?</p> <p>10 A. No.</p> <p>11 Q. To your knowledge, did Publix hold live</p> <p>12 auctions to determine its suppliers of private</p> <p>13 label egg?</p> <p>14 A. To my knowledge, no, I don't think we</p> <p>15 did.</p> <p>16 MR. GERMAINE: For the Record, you</p> <p>17 stopped your question at the end. You meant</p> <p>18 liquid eggs.</p> <p>19 BY MR. SCHWINGLER:</p> <p>20 Q. Private label liquid eggs, yes.</p> <p>21 A. To my knowledge, no. Once again, this</p> <p>22 is controlled by MSP.</p>
<p style="text-align: right;">131</p> <p>1 be comfortable with it and answer the questions.</p> <p>2 I will direct your attention to the page</p> <p>3 with the number 8225 in the lower right corner,</p> <p>4 which is near the end. Actually, why don't we go</p> <p>5 back one page before, 8224. The page says "Publix</p> <p>6 Category Review, Publix Brand Egg Substitutes" at</p> <p>7 the stop. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Are you familiar with this document?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What is this document?</p> <p>12 A. It's the Publix brand egg substitutes</p> <p>13 category review.</p> <p>14 Q. And so this is a schedule of events that</p> <p>15 will occur as part of the category review for</p> <p>16 private label eggs?</p> <p>17 A. Yes.</p> <p>18 Q. And before I -- with respect to the</p> <p>19 prior exhibit, I believe you testified that you</p> <p>20 were not familiar with the phrase "connectivity</p> <p>21 exercise"?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">133</p> <p>1 Q. It is. Okay. So as the buyer, you said</p> <p>2 MSP controls this category review process?</p> <p>3 A. Yes.</p> <p>4 Q. At what point does the buyer become</p> <p>5 involved in the decision, the decision about</p> <p>6 purchasing eggs?</p> <p>7 A. Deciding on the supplier?</p> <p>8 Q. From whom to purchase eggs.</p> <p>9 A. When MSP compiles all the information,</p> <p>10 they give it to us.</p> <p>11 Q. And then it comes to the buyer?</p> <p>12 A. The buyer and the category manager and</p> <p>13 the business development director.</p> <p>14 Q. And the information that MSP compiles,</p> <p>15 does that include pricing information?</p> <p>16 A. Yes.</p> <p>17 Q. So when, when the buyer first becomes</p> <p>18 involved, the supplier has already submitted a</p> <p>19 price quotation; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So you're not familiar with how</p> <p>22 that price quotation was generated, correct?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

35 (Pages 134 to 137)

<p style="text-align: right;">134</p> <p>1 A. MSP is in charge of that.</p> <p>2 Q. You only know what the, what the price</p> <p>3 was when it was given to, to the buyer, correct?</p> <p>4 A. Yes.</p> <p>5 Q. So it possible, but you don't know</p> <p>6 whether that price was determined through a live</p> <p>7 auction, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And is Steve Hicks somebody that would</p> <p>10 have the information about whether Publix</p> <p>11 conducted live auctions?</p> <p>12 A. I'm not -- I don't know.</p> <p>13 Q. Okay. Turning to the next page, number</p> <p>14 8225 in the lower right corner. At the top it</p> <p>15 says "Publix Brand Egg Substitutes Vendor</p> <p>16 Requirements." Are you familiar with this</p> <p>17 document?</p> <p>18 A. To the point that it's in front of me</p> <p>19 now.</p> <p>20 Q. But you haven't seen this document</p> <p>21 before today?</p> <p>22 A. No, sir.</p>	<p style="text-align: right;">136</p> <p>1 A. No, sir.</p> <p>2 Q. If you look under the pricing</p> <p>3 parameters, on the left it says "pricing</p> <p>4 parameters" and then there's some bullet points.</p> <p>5 And the fourth bullet point down is called</p> <p>6 pricing. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And then it says to the right: Fixed</p> <p>9 base pricing: "Dead net cost quotations must</p> <p>10 remain fixed and valid for one year after initial</p> <p>11 shipment."</p> <p>12 Can you explain to me what dead net cost</p> <p>13 quotations are?</p> <p>14 A. Um, that would be fixed cost.</p> <p>15 Q. And is that -- by dead net cost, is that</p> <p>16 the, sort of the out-of-pocket price that Publix</p> <p>17 would pay for the product?</p> <p>18 A. Yes.</p> <p>19 Q. And then it says: "These quotations</p> <p>20 must remain fixed and valid for one year after</p> <p>21 initial shipment." Does that mean that Publix</p> <p>22 would pay the same price for an entire year for</p>
<p style="text-align: right;">135</p> <p>1 Q. Okay. And you haven't seen -- assuming</p> <p>2 this is an example of a vendor requirement</p> <p>3 document that MSP used as part of a category</p> <p>4 review process, have you seen any other documents</p> <p>5 like this? Any other -- let me rephrase.</p> <p>6 Apart from this document in front of</p> <p>7 you, have you ever seen a list of vendor</p> <p>8 requirements prepared by MSP for the private label</p> <p>9 eggs?</p> <p>10 A. Apart from this document in front of me?</p> <p>11 Q. Yes.</p> <p>12 A. Have I seen other MSP documents?</p> <p>13 Q. Have you ever seen a list of vendor</p> <p>14 requirements for private label eggs, liquid eggs.</p> <p>15 A. That would be this document.</p> <p>16 Q. Correct. But other than this?</p> <p>17 A. I just testified I haven't seen this</p> <p>18 before.</p> <p>19 Q. Sure. But other, other than this</p> <p>20 document now, have you, have you seen any other</p> <p>21 lists of vendor requirements for private label</p> <p>22 eggs?</p>	<p style="text-align: right;">137</p> <p>1 that product?</p> <p>2 MR. GERMAINE: Objection.</p> <p>3 A. As quoted in this document, yes.</p> <p>4 BY MR. SCHWINGLER:</p> <p>5 Q. Other than what's in this document, do</p> <p>6 you have any understanding of whether the fixed</p> <p>7 price would remain fixed for a year?</p> <p>8 A. No.</p> <p>9 Q. Okay. The last sentence in that little</p> <p>10 paragraph says, very, variable indices and their</p> <p>11 review -- I don't want to skip over and lose</p> <p>12 context. So after the term formula based pricing:</p> <p>13 "Specified fixed indices must remain fixed for one</p> <p>14 year." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And then it says: "Variable indices and</p> <p>17 the review frequency would be mutually agreed to</p> <p>18 by vendor and Publix." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand what the term</p> <p>21 "variable indices" refers to in this document?</p> <p>22 A. No.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

36 (Pages 138 to 141)

<p style="text-align: right;">138</p> <p>1 Q. And do you understand what the term</p> <p>2 "fixed indices" refers to in this document?</p> <p>3 A. No. I have an idea, but I don't know</p> <p>4 what it means.</p> <p>5 Q. So understanding that you don't know,</p> <p>6 what is your understanding?</p> <p>7 A. Fixed would probably be packaging cost.</p> <p>8 Variable would probably be product inside the</p> <p>9 packaging.</p> <p>10 Q. Okay. Then under quality assurance near</p> <p>11 the bottom of the page, the fourth bullet, it</p> <p>12 says: "The selected vendor's products will meet</p> <p>13 the specification established for Publix brand</p> <p>14 products. Publix reserves the right to refuse any</p> <p>15 product that does not meet or exceed standards of</p> <p>16 the established NRB." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And I believe you testified before that</p> <p>19 with respect to private label eggs, the</p> <p>20 established NRB was ConAgra.</p> <p>21 A. For liquid eggs?</p> <p>22 Q. For private label liquid, yeah.</p>	<p style="text-align: right;">140</p> <p>1 me an example of, for a shell egg, what is Publix</p> <p>2 looking for in terms of quality?</p> <p>3 A. High-quality product. No breaks, no</p> <p>4 chips.</p> <p>5 Q. For a private label liquid egg</p> <p>6 substitute, what quality factors does Publix</p> <p>7 consider?</p> <p>8 A. CQA is in charge of the, the testing of</p> <p>9 the products.</p> <p>10 Q. So are you familiar with any -- whether</p> <p>11 Publix imposes a bacteria plate count requirement?</p> <p>12 A. That would be a CQA question.</p> <p>13 Q. Other than quality -- let's talk about</p> <p>14 shell eggs now. Other than quality, what</p> <p>15 non-price factors does Publix consider when</p> <p>16 determining which suppliers to use?</p> <p>17 A. Supply.</p> <p>18 Q. Do you mean the ability to supply a</p> <p>19 sufficient volume?</p> <p>20 A. Yes.</p> <p>21 Q. Does -- is the reason Publix buys from</p> <p>22 only two shell egg suppliers, because there aren't</p>
<p style="text-align: right;">139</p> <p>1 A. Yes.</p> <p>2 Q. And so, the private label liquid product</p> <p>3 Publix was purchasing was required to meet or</p> <p>4 exceed the standards of ConAgra's Egg Beaters</p> <p>5 product; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. So if you, if you were not involved in</p> <p>8 the category review process, is it fair to say</p> <p>9 that you have no knowledge about whether the</p> <p>10 requirements for bids changed between 2002 and the</p> <p>11 end of 2008?</p> <p>12 A. No, sir.</p> <p>13 Q. So you're not aware of whether ConAgra</p> <p>14 required fixed pricing in 2002 and then changed</p> <p>15 that policy?</p> <p>16 A. No, sir.</p> <p>17 Q. Once the -- once bids come in from shell</p> <p>18 egg suppliers, what factors, other than price,</p> <p>19 does Publix consider when determining which</p> <p>20 supplier to use?</p> <p>21 A. Quality.</p> <p>22 Q. Quality? And by quality, can you give</p>	<p style="text-align: right;">141</p> <p>1 very many shell egg suppliers that can supply a</p> <p>2 sufficient volume to meet Publix's needs?</p> <p>3 A. Well, one of our two suppliers bought</p> <p>4 two other suppliers, so that's one reason why we</p> <p>5 deal with two. But there's, there's a limited</p> <p>6 number of companies that can supply Publix with</p> <p>7 enough eggs for, for a large amount of stores.</p> <p>8 Q. And it's important to Publix that have a</p> <p>9 reliable supply of shell eggs?</p> <p>10 A. Yes.</p> <p>11 Q. So there's never going to be an empty</p> <p>12 refrigerator at a Publix store that doesn't have</p> <p>13 any shell eggs?</p> <p>14 A. That's our goal. It doesn't always</p> <p>15 happen.</p> <p>16 Q. What non-price factors, other than</p> <p>17 quality, does Publix consider when determining</p> <p>18 which supplier to use when purchasing private</p> <p>19 label liquid eggs?</p> <p>20 A. Repeat that question, please.</p> <p>21 Q. Talking only about private label liquid</p> <p>22 eggs.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

37 (Pages 142 to 145)

<p style="text-align: right;">142</p> <p>1 A. Only liquid eggs, yes, sir.</p> <p>2 Q. What non-price factors, other than</p> <p>3 quality, does Publix consider when determining</p> <p>4 which supplier to use?</p> <p>5 A. Other than quality?</p> <p>6 Q. Does reliability, is that something that</p> <p>7 Publix considers?</p> <p>8 A. Yes.</p> <p>9 Q. Is the ability to produce a sufficient</p> <p>10 quantity something that Publix would consider?</p> <p>11 A. Part of reliability, yes, sir.</p> <p>12 Q. Once the, once the suppliers submit</p> <p>13 their bids for shell eggs, does any additional</p> <p>14 negotiation between Publix and the supplier take</p> <p>15 place?</p> <p>16 A. Um, I'm sure there was in 2000 -- the</p> <p>17 last review, I'm sure there was some.</p> <p>18 Q. When was the last review, do you know?</p> <p>19 A. I think your document said 2005.</p> <p>20 MR. GERMAINE: This one is from 2008.</p> <p>21 THE WITNESS: That's liquid. 2008.</p> <p>22 A. But you said shell eggs.</p>	<p style="text-align: right;">144</p> <p>1 A. I'm not sure. I'm not aware.</p> <p>2 Q. Are you aware of why Publix uses an</p> <p>3 Urner Barry market based price to purchase the</p> <p>4 Publix branded shell eggs?</p> <p>5 A. Am I aware why?</p> <p>6 Q. Yeah.</p> <p>7 A. No.</p> <p>8 Q. Go ahead.</p> <p>9 A. The Urner Barry market lists the --</p> <p>10 updates the cost of the supply every day.</p> <p>11 Q. Sure, but why does Publix choose to buy</p> <p>12 its shell eggs off of a market basis?</p> <p>13 A. Um, I don't know. Other than that's the</p> <p>14 way it's been done.</p> <p>15 Q. Has Publix considered other, other ways</p> <p>16 to purchase shell eggs other than market basis?</p> <p>17 A. Private label shell eggs?</p> <p>18 Q. Yes.</p> <p>19 A. No, sir.</p> <p>20 Q. So Publix has not considered a, a price</p> <p>21 that would be tied to a grain market, for example?</p> <p>22 A. Until you mentioned that today, I had</p>
<p style="text-align: right;">143</p> <p>1 BY MR. SCHWINGLER:</p> <p>2 Q. For shell eggs.</p> <p>3 A. So that was 2005 was the document that</p> <p>4 you handed to me.</p> <p>5 Q. Sure. Are you aware of any category</p> <p>6 reviews that have occurred since 2005?</p> <p>7 A. No, sir.</p> <p>8 MR. GERMAINE: For shell eggs.</p> <p>9 BY MR. SCHWINGLER:</p> <p>10 Q. For shell eggs.</p> <p>11 A. No, sir.</p> <p>12 Q. And are you aware of any category</p> <p>13 reviews that have occurred for private label</p> <p>14 liquid eggs since 2005 --</p> <p>15 A. 2008.</p> <p>16 Q. -- or 2008?</p> <p>17 A. Is the document here. Since 2008?</p> <p>18 Q. Yeah.</p> <p>19 A. No, sir.</p> <p>20 Q. Are you aware of any category reviews</p> <p>21 for private label liquid eggs that occurred</p> <p>22 between 2002 and 2008?</p>	<p style="text-align: right;">145</p> <p>1 never heard of that before.</p> <p>2 Q. Have you heard of the term "cost plus</p> <p>3 pricing"?</p> <p>4 A. Cost plus pricing? Yes, sir.</p> <p>5 Q. What does that mean to you?</p> <p>6 A. That would be a cost plus the factor</p> <p>7 included in the price of the product to cover</p> <p>8 packaging or materials or, et cetera.</p> <p>9 Q. And did Publix ever consider cost plus</p> <p>10 pricing for Publix branded shell eggs?</p> <p>11 A. No.</p> <p>12 Q. Did Publix ever ask its vendors if they</p> <p>13 offered different pricing methods?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Is it possible that Publix might have</p> <p>16 done so as part of the category review process but</p> <p>17 you're just not familiar with it?</p> <p>18 A. It's possible.</p> <p>19 MR. SCHWINGLER: Why don't -- can I do</p> <p>20 one more exhibit and is that a good time for</p> <p>21 lunch?</p> <p>22 THE WITNESS: Yes.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

38 (Pages 146 to 149)

<p style="text-align: right;">146</p> <p>1 MR. GERMAINE: It's up to the witness.</p> <p>2 MR. SCHWINGLER: Is that good for you?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. SCHWINGLER: Exhibit 11.</p> <p>5 (Wilson 11 Received and Marked)</p> <p>6 BY MR. SCHWINGLER:</p> <p>7 Q. Mr. Wilson, we've handed you what's been</p> <p>8 marked as Exhibit 11, which is a single-page</p> <p>9 e-mail bearing the Bates number PUB_EGGS_016558.</p> <p>10 It appears to have been sent from Chris Smith to</p> <p>11 Jeff Cutler on December 23rd, 2003.</p> <p>12 Do you want to take a moment to review</p> <p>13 the document and then -- let me know once you've</p> <p>14 done so?</p> <p>15 A. Yes, sir.</p> <p>16 Q. First of all, who is Chris Smith, if you</p> <p>17 know?</p> <p>18 A. This is pertaining to price that we're</p> <p>19 not talking about today.</p> <p>20 Q. This is -- is this part of the</p> <p>21 manufacturing business unit that --</p> <p>22 A. It says in the e-mail, Publix flat price</p>	<p style="text-align: right;">148</p> <p>1 going off the Record.</p> <p>2 (Proceedings recessed at 12:09 p.m.)</p> <p>3 (Proceedings resumed at 1:14 p.m.)</p> <p>4 THE VIDEOGRAPHER: It's 1:14. We're</p> <p>5 back on the Record.</p> <p>6 MR. SCHWINGLER: I think we're on</p> <p>7 Exhibit 12 now.</p> <p>8 (Wilson 12 Received and Marked)</p> <p>9 BY MR. SCHWINGLER:</p> <p>10 Q. Mr. Wilson, we've handed you what's been</p> <p>11 marked as Exhibit 12, a document bearing Bates</p> <p>12 range PUB_EGGS_006959 through 006997. It's a</p> <p>13 fairly lengthy document. And as always, you're</p> <p>14 free to read as much as you need to. But I'll</p> <p>15 direct your attention to -- it will be the fourth</p> <p>16 page of the document. It has the Bates range 6962</p> <p>17 or the Bates number 6962.</p> <p>18 So I'll direct your attention</p> <p>19 specifically to line 27 on the left side of the</p> <p>20 page, there are sort of rows and columns. I'd ask</p> <p>21 you to read row 27.</p> <p>22 A. Yes, sir.</p>
<p style="text-align: right;">147</p> <p>1 -- Lakeland or Bucknell payment terms. Jeff</p> <p>2 Cutler, plant manager, Cutler at Abbeville, LLC.</p> <p>3 This is a product that we don't sell in the</p> <p>4 grocery.</p> <p>5 Q. So this is a, this is a -- relates to</p> <p>6 liquid whole eggs, is that your understanding?</p> <p>7 A. That's what it looks like to me.</p> <p>8 Q. And the grocery business unit does not</p> <p>9 purchase or sell liquid whole egg, correct?</p> <p>10 A. Just -- it looks like it's a 30-pound</p> <p>11 bag or in a box and a 2000-pound tote. So no,</p> <p>12 sir, we don't sell that.</p> <p>13 Q. So you're not familiar with that product</p> <p>14 being sold by the grocery unit?</p> <p>15 A. No, sir.</p> <p>16 MR. GERMAINE: Can you imagine?</p> <p>17 MR. SCHWINGLER: All right. Well --</p> <p>18 MR. BJORK: Somebody really likes eggs.</p> <p>19 MR. SCHWINGLER: If you don't know</p> <p>20 anything about it, then we'll go get lunch.</p> <p>21 THE WITNESS: Okay.</p> <p>22 THE VIDEOGRAPHER: It's 12:09. We're</p>	<p style="text-align: right;">149</p> <p>1 Q. And so, before I ask you about question</p> <p>2 27, if you turn back to the front page of this</p> <p>3 document -- actually, I believe the second page of</p> <p>4 the exhibit, it has the Bates number 6960. The</p> <p>5 top of the page it says "Publix Super Markets,</p> <p>6 Inc. Qualifying Questionnaire, Publix Brand X."</p> <p>7 Do you see that?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you recognize this document?</p> <p>10 A. Um, it's in front of me now. I've never</p> <p>11 seen it before.</p> <p>12 Q. Have you seen, other than this specific</p> <p>13 document, are you familiar with any questionnaires</p> <p>14 that Publix sends to egg suppliers?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And is it typical for Publix to send</p> <p>17 questionnaires that ask suppliers to respond to</p> <p>18 various questions?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And returning to the -- to number 27 on</p> <p>21 page 6962, there appears to be a typo, but the</p> <p>22 question 27 is: "Are your plans in compliance</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

39 (Pages 150 to 153)

<p style="text-align: right;">150</p> <p>1 with the FMI-NCCR Animal Welfare Guidelines";is</p> <p>2 that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. First of all, what is FMI, if you know?</p> <p>5 A. Food Market Institute.</p> <p>6 Q. And what do they do?</p> <p>7 A. They, they are a group of food market --</p> <p>8 they are a group that regulates or tries to get</p> <p>9 regulations pushed through Washington on different</p> <p>10 agendas.</p> <p>11 Q. So is it an industry group that</p> <p>12 represents retail grocery stores?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And is Publix a member of FMI?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Has Publix been a member of FMI since</p> <p>17 2002?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And do you know what NCCR stands for?</p> <p>20 A. Um, not off the top of my head, no, sir.</p> <p>21 Q. Do you know what is referred to here</p> <p>22 with the phrase "FMI-NCCR Animal Welfare</p>	<p style="text-align: right;">152</p> <p>1 in any discussions regarding whether to put this</p> <p>2 question in the questionnaire?</p> <p>3 A. No, sir. I was not in the buying</p> <p>4 department in 2002, so I wouldn't have been part</p> <p>5 of the discussions.</p> <p>6 Q. And just for the Record, on line 27, on</p> <p>7 page 6962, what was the response from the supplier</p> <p>8 to the question in number 27?</p> <p>9 A. Yes.</p> <p>10 Q. Yes. Turning to line 30 on that same</p> <p>11 page, it says: What other pricing systems do you</p> <p>12 offer shell egg customers (cost plus), et cetera?</p> <p>13 Why was Publix asking shell egg suppliers what</p> <p>14 other pricing system they offer?</p> <p>15 A. Fact gathering.</p> <p>16 Q. Was Publix considering using a pricing</p> <p>17 system other than an Urner Barry market base price</p> <p>18 for its shell eggs?</p> <p>19 A. Not that I'm aware of, no, sir.</p> <p>20 Q. And is it -- isn't it correct that</p> <p>21 Cal-Maine or the supplier responded to that</p> <p>22 question by referencing -- stating: "We would</p>
<p style="text-align: right;">151</p> <p>1 Guidelines"?</p> <p>2 A. I've seen it before, yes, sir.</p> <p>3 Q. What's your understanding of that</p> <p>4 phrase?</p> <p>5 A. FMI is the Food Market Institute and</p> <p>6 animal welfare guidelines are the guidelines that</p> <p>7 they, they hold as the standard for companies to</p> <p>8 follow for --</p> <p>9 Q. Sure. And why, why was Publix asking</p> <p>10 its suppliers whether their plans were in</p> <p>11 compliance with the FMI-NCCR Animal Welfare</p> <p>12 Guidelines?</p> <p>13 A. Fact gathering.</p> <p>14 Q. Was it important to Publix that its</p> <p>15 suppliers are in compliance with those guidelines?</p> <p>16 A. I think it was more or less just fact</p> <p>17 gathering.</p> <p>18 Q. Are you personally familiar with why</p> <p>19 Publix included this question in the questionnaire</p> <p>20 to suppliers?</p> <p>21 A. Just gathering information.</p> <p>22 Q. Sure. But are you -- were you involved</p>	<p style="text-align: right;">153</p> <p>1 discuss a cost plus or sliding scale (greater</p> <p>2 discount when market is higher) as discussed at</p> <p>3 meeting." Is that, is that what the supplier's</p> <p>4 response was?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Are you familiar with the meeting that's</p> <p>7 referred to in that answer?</p> <p>8 A. I'm assuming they were meeting with</p> <p>9 them.</p> <p>10 Q. But you weren't -- you don't know</p> <p>11 specifically what -- when that meeting occurred?</p> <p>12 A. It would've been after this date. This</p> <p>13 was on -- was there a date on this document, when</p> <p>14 this was sent out? No later than December 14,</p> <p>15 2004. So I'm sure it would've happened after</p> <p>16 December 14th, 2004.</p> <p>17 Q. For the Record, where are you seeing the</p> <p>18 date December 14th? I see it, on --</p> <p>19 A. Down at the bottom there: "Return the</p> <p>20 completed questionnaire electronically, if</p> <p>21 possible, to steve.hicks@Publix.com."</p> <p>22 Q. The bottom left corner of page 6962,</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

40 (Pages 154 to 157)

<p style="text-align: right;">154</p> <p>1 correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Do you know what a sliding scale</p> <p>4 pricing system is?</p> <p>5 A. No, sir.</p> <p>6 Q. And I take it you're not aware whether</p> <p>7 Publix considered purchasing shell eggs using a</p> <p>8 sliding scale system?</p> <p>9 A. No, sir.</p> <p>10 Q. I take any questions about the deli,</p> <p>11 business units, egg procurement are better for</p> <p>12 tomorrow's witness?</p> <p>13 MR. GERMAINE: Yes.</p> <p>14 BY MR. SCHWINGLER:</p> <p>15 Q. And you wouldn't have any knowledge</p> <p>16 about the purchases of eggs or egg products by the</p> <p>17 deli business unit.</p> <p>18 A. No, sir.</p> <p>19 MR. SCHWINGLER: This would be 13.</p> <p>20 (Wilson 13 Received and Marked)</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. Mr. Wilson, I've handed you what's been</p>	<p style="text-align: right;">156</p> <p>1 sort of is an example of the quality standards</p> <p>2 that Publix imposed on its shell egg suppliers?</p> <p>3 A. If not higher than that, yes, sir.</p> <p>4 Q. Do you believe Publix imposed higher</p> <p>5 standards than is set forth in this document?</p> <p>6 A. We hold all of our suppliers to high</p> <p>7 standards. Just as we do ourselves.</p> <p>8 Q. And Publix -- product quality is</p> <p>9 important to Publix, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And Publix wants to sell its customers a</p> <p>12 high-quality product --</p> <p>13 A. Yes, sir.</p> <p>14 Q. -- correct? And Publix holds their</p> <p>15 products out as being high in quality; is that</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Under the heading product description,</p> <p>19 do you see that paragraph?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And at the last sentence, where it said,</p> <p>22 it says: "Product shall be accordance with the</p>
<p style="text-align: right;">155</p> <p>1 marked as Exhibit 13. It's a document bearing the</p> <p>2 Bates range PUB_EGGS_007150 through 007157. And</p> <p>3 I'd ask you to turn to the second page of that</p> <p>4 document, Bates number 7151, and review that</p> <p>5 document briefly, if you could.</p> <p>6 A. Yes, sir.</p> <p>7 Q. Are you familiar with this document?</p> <p>8 A. Yes, sir. I've seen it. I had seen it</p> <p>9 before.</p> <p>10 Q. The top of this document says "Product</p> <p>11 Specification for Publix Jumbo Eggs".</p> <p>12 A. Yes, sir.</p> <p>13 Q. Are you -- even though you haven't seen</p> <p>14 this document before, but have you seen other</p> <p>15 documents defining the product specifications for</p> <p>16 Publix eggs?</p> <p>17 A. Not in this form, no, sir.</p> <p>18 Q. Before you testified Publix considers</p> <p>19 quality when purchasing shell eggs; is that</p> <p>20 correct?</p> <p>21 A. Yes, sir, definitely.</p> <p>22 Q. Would you agree that this document, it</p>	<p style="text-align: right;">157</p> <p>1 industry's animal welfare guidelines and carton</p> <p>2 shall bear the, quote, 'animal care certificate',</p> <p>3 quote, logo." Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Are you familiar with what the phrase</p> <p>6 "the industry's animal welfare guidelines" is</p> <p>7 referring to here?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And what would that be?</p> <p>10 A. That would be the guidelines for animal</p> <p>11 care.</p> <p>12 Q. Would those be the guidelines put out by</p> <p>13 the United Egg Producers?</p> <p>14 A. The ones approved by FMI, I believe.</p> <p>15 Q. So the -- when Publix uses the phrase</p> <p>16 the "industry's animal welfare guidelines" in this</p> <p>17 document, they're referring to the FMI guidelines?</p> <p>18 A. I think they're the same.</p> <p>19 Q. And are you familiar with the Animal</p> <p>20 Care Certified logo?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And do you understand that that refers</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

41 (Pages 158 to 161)

<p style="text-align: right;">158</p> <p>1 to the logo associated with the United Egg 2 Producers Animal Welfare Program?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And are you aware that at some point 5 after 2004, the logo or the term became the UEP 6 Certified Program instead of the Animal Care 7 Certified program?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So when I refer to the Animal Care 10 Certified Program, you understand that to mean the 11 UEP Certified Program and vice versa?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So would you agree, based on this 14 document, that at least as of December 10th, 2004, 15 that Publix was requiring its shell egg suppliers 16 to be in compliance with the FMI Animal Welfare 17 Guidelines; is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And the -- at that point in time, Publix 20 was also requiring its shell egg suppliers to 21 provide the Animal Care Certified logo on the 22 cartons?</p>	<p style="text-align: right;">160</p> <p>1 A. Well, our packaging has it on it and if 2 we were buying something from someone that wasn't 3 Animal Care Certified, we'd be lying to our 4 customer.</p> <p>5 Q. Sure. So my original question was, at 6 this point in time, was Publix requiring the 7 Animal Care Certified logo for its shell egg 8 purchases?</p> <p>9 A. It was on the packaging, yes, sir.</p> <p>10 Q. So the answer to my question, though, is 11 yes, correct?</p> <p>12 A. Yes, sir. It was on the packaging. We 13 had to.</p> <p>14 Q. Who, within Publix, was responsible for 15 determining specifications that are imposed upon 16 shell egg suppliers?</p> <p>17 A. I wouldn't think it would be one person.</p> <p>18 Q. What job title or division would be 19 responsible for that?</p> <p>20 A. I believe it would be a team effort.</p> <p>21 Q. Okay. Who would be on that team?</p> <p>22 A. People from different areas. MSP, CQA,</p>
<p style="text-align: right;">159</p> <p>1 A. Yes, sir.</p> <p>2 Q. Was Publix aware, as of December 10th, 3 2004, that in order to use the Animal Care 4 Certified logo, a producer was required to be in 5 compliance with the UEP, at the time known as 6 Animal Care Certified program?</p> <p>7 A. Yes, sir.</p> <p>8 Q. To your knowledge, was Publix willing to 9 negotiate with suppliers on whether the shell egg 10 cartons would bear the Animal Care Certified logo?</p> <p>11 A. Were we willing to?</p> <p>12 Q. Let me phrase it another way. Was the 13 Animal Care Certified logo a requirement to sell 14 shell eggs to Publix?</p> <p>15 A. It was on our packaging, so we --</p> <p>16 Q. So at this point in time, December of 17 2004, Publix would not have purchased shell eggs 18 from a non-certified producer; is that correct?</p> <p>19 A. We wouldn't have lied to our customers 20 and said it was if they weren't.</p> <p>21 Q. So when you say you wouldn't have lied 22 to your customers, can you explain what you mean?</p>	<p style="text-align: right;">161</p> <p>1 buying.</p> <p>2 Q. As the buyer, when you were the buyer 3 for eggs, did you contribute your views on what 4 product specifications should be?</p> <p>5 A. For shell eggs?</p> <p>6 Q. Yes.</p> <p>7 A. No, sir. They were already established.</p> <p>8 Q. All right. You can set this document 9 aside.</p> <p>10 (Wilson 14 Received and Marked)</p> <p>11 BY MR. SCHWINGLER:</p> <p>12 Q. Mr. Wilson, I've handed you what's been 13 marked as Exhibit Number 14. It bears the Bates 14 range PUB_EGGS_008645 through 008659. I'll direct 15 your attention to the fourth page of the document 16 with the number 8649 in the bottom right-hand 17 corner, which for the Record, appears to be an 18 e-mail from Elise Richardson to Gerald Bondock on 19 October 24th, 2002. If you could review the 20 document and let me know once you've had a chance.</p> <p>21 A. Okay. Yes, sir.</p> <p>22 Q. Mr. Wilson, who is Elise Richardson?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

42 (Pages 162 to 165)

<p style="text-align: right;">162</p> <p>1 A. Um, I'm not sure.</p> <p>2 Q. Do you know who Gerald Bondock is?</p> <p>3 A. I know the name, but I don't --</p> <p>4 Q. How about Floyd Freeman?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Who is Floyd Freeman?</p> <p>7 A. He's in charge of MSP.</p> <p>8 Q. He runs MSP?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So is he -- was he the supervisor of</p> <p>11 Steve Hicks?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And the subject line of this, this</p> <p>14 e-mail at page 8648 is titled "Egg Substitutes";</p> <p>15 is that correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. The first sentence of the e-mail states:</p> <p>18 "The taste panel for this category proved to be</p> <p>19 very informative."</p> <p>20 Does Publix, is one of the criteria on</p> <p>21 which Publix evaluates retail egg substitutes, the</p> <p>22 taste of the product?</p>	<p style="text-align: right;">164</p> <p>1 Publix brand private label egg substitute; is that</p> <p>2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And does this -- I know this e-mail</p> <p>5 wasn't sent to you or from you, but does this</p> <p>6 e-mail refresh your recollection on that issue?</p> <p>7 A. It says there was an auction. I still</p> <p>8 am not aware of any.</p> <p>9 Q. Is your understanding of the, the second</p> <p>10 sentence in this e-mail, that the low bidder in</p> <p>11 the auction did not perform well in the taste</p> <p>12 test?</p> <p>13 A. Am I able to read that? Yes, sir.</p> <p>14 Q. Okay. And then the next sentence says:</p> <p>15 "Only two of the products compared favorably to</p> <p>16 the NRB", correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And then it says: "The team has</p> <p>19 recommended that we go with the lowest of these</p> <p>20 two bids. Michaels \$990,105 resulting in a" --</p> <p>21 I'll skip the rest of the sentence there.</p> <p>22 Do you understand that sentence to mean</p>
<p style="text-align: right;">163</p> <p>1 A. Yes, sir.</p> <p>2 Q. And so does Publix actually have a taste</p> <p>3 test before deciding to buy a retail egg</p> <p>4 substitute product?</p> <p>5 A. For the private label? For Publix?</p> <p>6 Q. Sure. For the Publix private label.</p> <p>7 A. Yes.</p> <p>8 Q. Does Publix hold a taste test before</p> <p>9 deciding to buy a national branded product?</p> <p>10 A. Not generally, no, sir.</p> <p>11 Q. The second sentence of the e-mail says,</p> <p>12 "Unfortunately, the product from the low bidder in</p> <p>13 the auction did not compare favorably with the NRB</p> <p>14 (or anything else)." Do you see that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And is the NRB for the retail egg</p> <p>17 substitute, ConAgra in this instance?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And that's the Egg Beaters product?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So my understanding -- you had testified</p> <p>22 earlier that you're not aware of any auctions for</p>	<p style="text-align: right;">165</p> <p>1 that Publix is -- that the results of the test</p> <p>2 influenced Publix's decision on which supplier to</p> <p>3 hire for this product?</p> <p>4 A. That's how it reads to me.</p> <p>5 Q. Is that consistent with your general</p> <p>6 understanding of Publix's egg procurement</p> <p>7 practices, that they would weigh -- give</p> <p>8 significant weight to a taste test?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Because Publix does not want to be</p> <p>11 selling a Publix-branded product that doesn't</p> <p>12 taste very good?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Are you familiar with the</p> <p>15 criteria that are used in the taste testing for</p> <p>16 private label eggs, liquid eggs?</p> <p>17 A. I'm sure it would be taste.</p> <p>18 Q. But there aren't -- other than does it</p> <p>19 taste good, yes or no, are there other criteria</p> <p>20 that Publix uses when evaluating taste?</p> <p>21 A. Other adjectives? Is that what you're</p> <p>22 asking me? Other adjectives used like good, bad,</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

43 (Pages 166 to 169)

<p style="text-align: right;">166</p> <p>1 salty or sweet or --</p> <p>2 Q. Well, salty or sweet would be --</p> <p>3 A. I mean, is that what you're asking?</p> <p>4 Q. Yeah. I mean, for example, does it</p> <p>5 taste salty, does it taste sweet? Are these -- do</p> <p>6 you know if there's a list of, sort of criteria</p> <p>7 that the taste testers would use?</p> <p>8 A. I would imagine it would be as many</p> <p>9 adjectives as they -- if it was chemical tasting</p> <p>10 or if it tasted like, whatever it tasted like. It</p> <p>11 could vary as greatly as the dictionary.</p> <p>12 Q. Are there specific factors that Publix</p> <p>13 is looking for when tasting those products?</p> <p>14 A. Quality. I mean, I don't know how to</p> <p>15 word it any other way than that.</p> <p>16 Q. Would Publix be interested in -- does</p> <p>17 Publix consider whether the product tastes like a,</p> <p>18 a regular egg?</p> <p>19 A. We want it to taste as good as possible.</p> <p>20 Q. Sure. But isn't the objective of the</p> <p>21 liquid egg substitute, to be a healthier</p> <p>22 alternative to a regular egg?</p>	<p style="text-align: right;">168</p> <p>1 in order to get a higher quality product?</p> <p>2 A. Yes.</p> <p>3 Q. To your knowledge, did Publix ever have</p> <p>4 quality issues with an egg supplier at the end of</p> <p>5 2008?</p> <p>6 A. To my knowledge, no, sir.</p> <p>7 Q. Would that be true for both shell eggs</p> <p>8 and private label liquid?</p> <p>9 A. Yes.</p> <p>10 Q. We touched on this earlier. Other than</p> <p>11 the private label liquid and the, sort of the</p> <p>12 liquid egg substitutes, are you familiar with any</p> <p>13 liquid egg products that are sold at retail by</p> <p>14 Publix?</p> <p>15 A. Other than label and branding?</p> <p>16 Q. Yeah.</p> <p>17 A. No, sir.</p> <p>18 Q. Are you familiar with any frozen egg</p> <p>19 products that are sold at retail by Publix?</p> <p>20 A. I believe there is a frozen liquid egg,</p> <p>21 isn't there? Or we used to. I don't know if it's</p> <p>22 still in the frozen department or not. But I</p>
<p style="text-align: right;">167</p> <p>1 A. Yes, sir.</p> <p>2 Q. And --</p> <p>3 A. It is egg. I mean, you do realize that,</p> <p>4 right?</p> <p>5 Q. The -- what I'm trying to understand is,</p> <p>6 is Publix looking for a private label egg</p> <p>7 substitute that most closely resembles a regular</p> <p>8 egg from a taste standpoint?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Does Publix ever pay a higher</p> <p>11 price in order to obtain a higher quality shell</p> <p>12 egg?</p> <p>13 A. Um, we get our shell eggs from our</p> <p>14 supplier.</p> <p>15 Q. The e-mail we just looked at, it</p> <p>16 appeared that Publix was rejecting the lowest cost</p> <p>17 bidder because the product didn't taste very good.</p> <p>18 Going with a higher price product.</p> <p>19 A. This is liquid eggs, though. You just</p> <p>20 asked me about shell eggs.</p> <p>21 Q. For shell eggs. For liquid, for private</p> <p>22 label liquid, was Publix willing to pay more money</p>	<p style="text-align: right;">169</p> <p>1 believe we used to sell a frozen Egg Beater.</p> <p>2 Q. Was that a -- do you remember whether</p> <p>3 that was a ConAgra product?</p> <p>4 A. If it had the Egg Beater name, it would</p> <p>5 have to be.</p> <p>6 Q. So you do recall it bore the Egg Beater</p> <p>7 name?</p> <p>8 A. I believe we did, yes, sir. That was</p> <p>9 many years ago.</p> <p>10 Q. Ballpark, how many years ago?</p> <p>11 A. I've been with Publix for 25 years, so</p> <p>12 more than 12; less than 25.</p> <p>13 Q. So before 2002?</p> <p>14 A. Um, it could've been after that date.</p> <p>15 I'm not sure.</p> <p>16 Q. Okay. Who does Publix, the Publix</p> <p>17 grocery unit consider to be its customers?</p> <p>18 A. Our stores.</p> <p>19 Q. The actual Publix stores, themselves?</p> <p>20 A. That's who we service.</p> <p>21 Q. That's who you service. And then the</p> <p>22 stores, themselves, sell to the consuming public,</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

44 (Pages 170 to 173)

<p style="text-align: right;">170</p> <p>1 correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. When you say the business unit considers</p> <p>4 the stores to be their customer, does the business</p> <p>5 unit actually sell shell eggs to the stores?</p> <p>6 A. We take care of all the issues, so the</p> <p>7 stores can sell the product to the customer.</p> <p>8 Q. Sure. I just want to understand, is the</p> <p>9 grocery retail business unit serving as a</p> <p>10 distributor for the --</p> <p>11 MR. GERMAINE: Objection.</p> <p>12 A. I wouldn't call us a distributor for the</p> <p>13 stores, no, sir.</p> <p>14 BY MR. SCHWINGLER:</p> <p>15 Q. Let me put this another way: Does the</p> <p>16 same -- the stores aren't independently owned,</p> <p>17 correct?</p> <p>18 A. No, sir.</p> <p>19 Q. They are owned by, by Publix Super</p> <p>20 Markets, Incorporated, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Which is the same company that owns what</p>	<p style="text-align: right;">172</p> <p>1 any other business units that sell shell eggs for</p> <p>2 retail sale?</p> <p>3 MR. GERMAINE: At Publix?</p> <p>4 BY MR. SCHWINGLER:</p> <p>5 Q. At any other Publix business units that</p> <p>6 sell shell eggs at retail?</p> <p>7 A. No, sir, not to my knowledge.</p> <p>8 Q. Okay. Who within Publix is responsible</p> <p>9 for determining the price at which Publix sells</p> <p>10 shell eggs?</p> <p>11 A. The buyer.</p> <p>12 Q. So that would've been you in 2007?</p> <p>13 A. Yes, sir.</p> <p>14 Q. So you both -- so you, as the buyer,</p> <p>15 were in charge of setting the price that is</p> <p>16 charged to the customer in the store?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And how did you determine what price to</p> <p>19 charge?</p> <p>20 MR. GERMAINE: Again, I'm going to</p> <p>21 restate my downstream objection here. The</p> <p>22 witness can answer on his individual basis.</p>
<p style="text-align: right;">171</p> <p>1 we're referring to here as the grocery retail</p> <p>2 business unit.</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. So when you say that the stores</p> <p>5 are your customers, you mean more in the sense of</p> <p>6 that that's who you're providing services to?</p> <p>7 A. Yes. We serve the stores.</p> <p>8 Q. But you're not actually buying a product</p> <p>9 and then selling it to the stores.</p> <p>10 A. No, sir.</p> <p>11 Q. Okay. I may have asked this before.</p> <p>12 Does Publix ever serve as a distributor of shell</p> <p>13 eggs?</p> <p>14 A. No, sir.</p> <p>15 Q. Does Publix ever serve as the</p> <p>16 distributor of egg products?</p> <p>17 A. No, sir. Not that I'm aware of.</p> <p>18 Q. Other than -- so the grocery retail</p> <p>19 business unit sells shell eggs for retail sale as</p> <p>20 we've discussed extensively, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And, and to your knowledge, are there</p>	<p style="text-align: right;">173</p> <p>1 A. As many different criteria.</p> <p>2 BY MR. SCHWINGLER:</p> <p>3 Q. Can you give me an example of one</p> <p>4 criteria that you used when you were the buyer for</p> <p>5 shell eggs when determining the price to charge</p> <p>6 for retail shell eggs?</p> <p>7 A. Yes, sir. Cost.</p> <p>8 Q. The cost that Publix paid?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Can you give me another example?</p> <p>11 A. Market.</p> <p>12 Q. What do you mean by market?</p> <p>13 A. Where the eggs are being sold.</p> <p>14 Q. Location?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And how would the location impact the</p> <p>17 price?</p> <p>18 A. Again, many different factors.</p> <p>19 Q. Having to do with the socioeconomic --</p> <p>20 A. Competition. There's all kind of</p> <p>21 factors involved.</p> <p>22 Q. So whether there are other stores in</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

45 (Pages 174 to 177)

<p style="text-align: right;">174</p> <p>1 that location that are -- and what prices those</p> <p>2 stores are charging?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Are pricing decisions made on a</p> <p>5 store-by-store basis?</p> <p>6 A. Um, no.</p> <p>7 Q. They're not -- you indicated that</p> <p>8 location could be a factor in the price. Now,</p> <p>9 does location -- how does location impact the</p> <p>10 price if the price is not set on a store-by-store</p> <p>11 basis?</p> <p>12 A. There could be a hundred stores in a</p> <p>13 group or --</p> <p>14 Q. Oh, so you --</p> <p>15 A. Or 20 stores in a group or 500. It's</p> <p>16 not a store-by-store basis.</p> <p>17 Q. It's not necessarily, you know, one</p> <p>18 store at a time, but you may look at groups of</p> <p>19 stores in determining the price?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Is that true for liquid egg substitutes</p> <p>22 as well?</p>	<p style="text-align: right;">176</p> <p>1 A. They could've changed weekly.</p> <p>2 Q. Would, would -- did they always change</p> <p>3 weekly?</p> <p>4 A. No, sir.</p> <p>5 Q. And so what would cause Publix to, to</p> <p>6 make a price change for retail shell eggs?</p> <p>7 A. Cost change.</p> <p>8 Q. Would that be the biggest driver?</p> <p>9 A. Yes.</p> <p>10 Q. Are you familiar with the term "loss</p> <p>11 leader"?</p> <p>12 A. Yes.</p> <p>13 Q. What does that term mean to you?</p> <p>14 A. To me, it means selling a product at a</p> <p>15 very low margin in order to attract customers into</p> <p>16 your store.</p> <p>17 Q. Does -- at any point from 2002 until the</p> <p>18 present, has Publix used shell eggs as loss</p> <p>19 leaders?</p> <p>20 A. I'm sure they have, yes, sir.</p> <p>21 Q. So there have been moments, in between</p> <p>22 2002 and present, when Publix has sold shell eggs</p>
<p style="text-align: right;">175</p> <p>1 A. Yes, sir.</p> <p>2 Q. When determining the price at which you</p> <p>3 sell branded shell eggs, is the process the same</p> <p>4 as it is for Publix branded shell eggs?</p> <p>5 A. Um --</p> <p>6 MR. GERMAINE: Objection to form.</p> <p>7 MR. SCHWINGLER: Let me, let me withdraw</p> <p>8 that.</p> <p>9 BY MR. SCHWINGLER:</p> <p>10 Q. Does Publix have the ability to</p> <p>11 determine the price at which it will sell branded</p> <p>12 shell eggs?</p> <p>13 A. Yes.</p> <p>14 Q. So Publix doesn't have to sell a price</p> <p>15 imposed by the supplier of the shell eggs.</p> <p>16 A. No.</p> <p>17 Q. Okay. How frequently -- let's just,</p> <p>18 from 2002 to the end of 2008, how frequently did</p> <p>19 Publix change its shell egg prices?</p> <p>20 A. Private label?</p> <p>21 Q. Sure. Let's start with private label</p> <p>22 shell eggs.</p>	<p style="text-align: right;">177</p> <p>1 at an intentionally lower price in order to</p> <p>2 generate more volume?</p> <p>3 MR. GERMAINE: Renew my downstream</p> <p>4 objection.</p> <p>5 MR. SCHWINGLER: Sure. I'll give you a</p> <p>6 standing objection on that.</p> <p>7 A. Yes.</p> <p>8 BY MR. SCHWINGLER:</p> <p>9 Q. Did Publix ever use -- did Publix ever</p> <p>10 offer a lower on shell eggs to attract customers</p> <p>11 to its stores more generally?</p> <p>12 A. That would be the only reason.</p> <p>13 Q. So it wasn't just that Publix wanted to</p> <p>14 sell more shell eggs. Publix wanted the lower egg</p> <p>15 prices to attract customers to the store to buy</p> <p>16 other products, correct?</p> <p>17 A. Yes, sir. We try to get as many</p> <p>18 customers as we can.</p> <p>19 Q. Does Publix have any records of when it</p> <p>20 -- withdrawn. When -- do individual Publix stores</p> <p>21 determine when to use eggs as a loss leader?</p> <p>22 A. No, sir.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

46 (Pages 178 to 181)

<p style="text-align: right;">178</p> <p>1 Q. Who makes that decision?</p> <p>2 A. The buyer.</p> <p>3 Q. The buyer. And can the buyer make that</p> <p>4 decision for multiple stores at once?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Can the buyer make that decision for</p> <p>7 some but not all Publix stores?</p> <p>8 A. Yes, sir. If he chooses.</p> <p>9 Q. Just off, if you know, approximately how</p> <p>10 many Publix stores are there currently?</p> <p>11 A. Currently today, 1076.</p> <p>12 Q. And what was the approximate number,</p> <p>13 between 2002 and the end of 2008, if you know?</p> <p>14 A. One of your documents said 846, and that</p> <p>15 was around 2004, 2005, so 2002 there would've been</p> <p>16 less than that. And 2008, there would've been</p> <p>17 more than that.</p> <p>18 Q. It's fair to say there are hundreds of</p> <p>19 Publix stores at all times relevant here?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And Publix would use shell eggs --</p> <p>22 Publix would not use shell eggs as a loss leader,</p>	<p style="text-align: right;">180</p> <p>1 whether to offer a promotion for shell eggs?</p> <p>2 A. Um, I don't understand the question. Do</p> <p>3 we consider the price of other products whenever</p> <p>4 we're pricing eggs? Like, do we consider price of</p> <p>5 any other product in the store when we're pricing</p> <p>6 eggs, is that your question?</p> <p>7 Q. The question is, does Publix ever offer</p> <p>8 promotions um, where a customer gets a lower shell</p> <p>9 egg price in connection with the sale of another</p> <p>10 product or service?</p> <p>11 A. Oh. A coupon or, or buy two of these</p> <p>12 and get a dollar off of eggs, is that what you're</p> <p>13 asking?</p> <p>14 Q. Those could be examples of what I'm</p> <p>15 asking.</p> <p>16 A. Those examples exist, so, yes.</p> <p>17 Q. And when a coupon is issued, for</p> <p>18 example, is that something that would be valid at</p> <p>19 all Publix stores?</p> <p>20 A. It would depend.</p> <p>21 Q. So coupons could be issued that would</p> <p>22 not impact all Publix stores at the same time,</p>
<p style="text-align: right;">179</p> <p>1 let's say, all 846 stores at the same time?</p> <p>2 MR. GERMAINE: Objection.</p> <p>3 A. Yes, we could.</p> <p>4 BY MR. SCHWINGLER:</p> <p>5 Q. It could?</p> <p>6 A. Yes.</p> <p>7 Q. But Publix could also use shell eggs as</p> <p>8 a loss leader for some portion of its stores at a</p> <p>9 given point in time, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What factors does Publix consider when</p> <p>12 determining whether to offer a promotion on shell</p> <p>13 eggs?</p> <p>14 A. Supply.</p> <p>15 Q. What do you mean by that?</p> <p>16 A. Is there enough supply to do it.</p> <p>17 Q. Does Publix consider the market price of</p> <p>18 shell eggs when deciding whether to have a</p> <p>19 promotion?</p> <p>20 A. Cost always has an effect, yes, sir.</p> <p>21 Q. Does Publix consider its pricing of</p> <p>22 other products or services when determining</p>	<p style="text-align: right;">181</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. You said cost is a major factor</p> <p>4 in the price that Publix charges its customers for</p> <p>5 shell eggs, correct?</p> <p>6 A. Yes.</p> <p>7 Q. How often does Publix increase or</p> <p>8 decrease its shell egg prices -- withdrawn.</p> <p>9 Assume shell egg prices were to</p> <p>10 increase. Typically, how long would it, would</p> <p>11 Publix wait until increasing its retail price to</p> <p>12 the customer for that product?</p> <p>13 MR. GERMAINE: Objection to form.</p> <p>14 A. Again, there's a lot of different</p> <p>15 factors involved.</p> <p>16 Q. So it's not necessarily the case that if</p> <p>17 egg prices go up on Tuesday, Publix will always</p> <p>18 increase its shell egg prices the following week?</p> <p>19 MR. GERMAINE: Objection to form.</p> <p>20 A. No.</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. Does Publix generally try to pass on</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

47 (Pages 182 to 185)

<p style="text-align: right;">182</p> <p>1 cost increases to the retail customer for shell 2 eggs?</p> <p>3 MR. GERMAINE: Objection.</p> <p>4 A. Um, there's many different factors 5 involved.</p> <p>6 BY MR. SCHWINGLER:</p> <p>7 Q. So it's not always the case that Publix 8 would pass along a cost increase to the end 9 consumer, correct?</p> <p>10 MR. GERMAINE: Objection. Asked and 11 answered.</p> <p>12 A. Yes.</p> <p>13 MR. RAYLE: Excuse me. Can I have that 14 question back?</p> <p>15 MR. SCHWINGLER: Sure. Can you read the 16 question back?</p> <p>17 (Reporter complied with above)</p> <p>18 MR. RAYLE: And his answer?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MR. RAYLE: Thank you.</p> <p>21 BY MR. SCHWINGLER:</p> <p>22 Q. All right. And I hate to do this again,</p>	<p style="text-align: right;">184</p> <p>1 Q. And Publix places a value on the 2 conditions that the animals that create products 3 Publix then sells to consumers, Publix places a 4 value on the way those animals are treated?</p> <p>5 A. Yes.</p> <p>6 Q. Has, has animal welfare been an 7 important issue to Publix since 1999?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Who within Publix is -- 10 (Discussion off Record)</p> <p>11 MR. GERMAINE: Is there anyone still on 12 the phone?</p> <p>13 MS. ALLEN: Yes. This is Karri Allen. 14 I'm still here.</p> <p>15 MR. GERMAINE: Hi, Karri. Sorry.</p> <p>16 BY MR. SCHWINGLER:</p> <p>17 Q. I'm going to ask you a question about 18 job titles. Which employees of Publix are 19 responsible for animal-welfare-related issues with 20 respect to egg-laying hens in particular?</p> <p>21 A. Um, answer questions about animal 22 welfare issues or -- or, or assuring that the</p>
<p style="text-align: right;">183</p> <p>1 but just, just so I'm -- can check the box, you 2 testified that Publix does not distribute shell 3 eggs to other companies; is that accurate?</p> <p>4 A. Yes.</p> <p>5 MR. SCHWINGLER: All right. Is 6 Mr. Wilson testifying about animal welfare 7 related issues on behalf of the whole 8 company? That is one of the topics that he 9 is being designated to cover.</p> <p>10 MR. GERMAINE: We'd have to look at 11 John's note to you and in the notice. 12 Mr. Wilson is prepared to testify about 13 animal welfare issues.</p> <p>14 MR. BJORK: Do you know what topics?</p> <p>15 MR. SCHWINGLER: Um, I'll tell you what, 16 we'll just ask him questions and see where it 17 goes.</p> <p>18 BY MR. SCHWINGLER:</p> <p>19 Q. As a general matter, Mr. Wilson, would 20 you agree that animal welfare is an important 21 issue for Publix?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">185</p> <p>1 animals are being taken care of? I mean what, 2 what extent are you talking about?</p> <p>3 Q. Sure. You testified that animal welfare 4 is an important issue for Publix, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So was there somebody within Publix that 7 was responsible for evaluating 8 animal-welfare-related issues between 1999 and the 9 end of 2008?</p> <p>10 A. Um, CQA would be the ones that would be 11 in charge of the audits of the facilities and 12 stuff.</p> <p>13 Q. So CQA would conduct the audits of the 14 suppliers. Was CQA responsible for determining 15 what animal welfare standards Publix would 16 require?</p> <p>17 A. I don't think CQA --</p> <p>18 MR. GERMAINE: Objection to the form.</p> <p>19 A. -- conducted the audits.</p> <p>20 BY MR. SCHWINGLER:</p> <p>21 Q. They didn't?</p> <p>22 A. I think outside companies conducted the</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

48 (Pages 186 to 189)

<p style="text-align: right;">186</p> <p>1 audits.</p> <p>2 Q. But CQA instructed the outside companies</p> <p>3 to conduct the audits, correct?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 A. CQA was in charge of making sure that</p> <p>6 the audits got done.</p> <p>7 Q. Sure.</p> <p>8 MR. SCHWINGLER: What exhibit are we on</p> <p>9 now?</p> <p>10 THE COURT REPORTER: 15.</p> <p>11 BY MR. SCHWINGLER:</p> <p>12 Q. Mr. Wilson, I'm handing you what's been</p> <p>13 marked as Exhibit 15. It's a one-page document</p> <p>14 bearing the Bates number PUB_EGGS_008095.</p> <p>15 (Wilson 15 Received and Marked)</p> <p>16 Q. I'll just ask you to review the portion</p> <p>17 of -- this letter is on Rose Acre Farms'</p> <p>18 letterhead, signed by Greg Hinton, it appears.</p> <p>19 And it's addressed, it appears, to Chris Smith.</p> <p>20 Who is Chris Smith?</p> <p>21 A. I'm not sure, sir.</p> <p>22 Q. You're not familiar with Chris Smith?</p>	<p style="text-align: right;">188</p> <p>1 on Tampa Farms Service letterhead, addressed to</p> <p>2 Mr. Dave Cerra.</p> <p>3 Are you familiar with Mr. Dave Cerra?</p> <p>4 A. Yes.</p> <p>5 Q. Am I pronouncing that last name</p> <p>6 correctly?</p> <p>7 A. Yes.</p> <p>8 Q. And who is Mr. Cerra?</p> <p>9 A. He was the BDD.</p> <p>10 Q. So he was the most senior Publix</p> <p>11 employee that was responsible for egg procurement?</p> <p>12 A. In 2002, yes, sir.</p> <p>13 Q. In 2002. If you flip the page to number</p> <p>14 011762, which is a document on Publix letterhead,</p> <p>15 addressed to all Publix egg producers/suppliers,</p> <p>16 from Dave Cerra dated July 11, 2002. The subject</p> <p>17 line states: "FMI-NCCR Animal Welfare</p> <p>18 Guidelines." Are you familiar with this document?</p> <p>19 A. Yes, sir.</p> <p>20 Q. All right. What is this document?</p> <p>21 A. It's a letter.</p> <p>22 Q. Okay. And what, what is the purpose of</p>
<p style="text-align: right;">187</p> <p>1 A. It says purchasing analyst on here.</p> <p>2 Q. Are you familiar with that job title?</p> <p>3 A. No, sir.</p> <p>4 Q. So I take it that you're not aware of</p> <p>5 why Rose Acre Farms would be communicating with</p> <p>6 Chris Smith about the subject matter of this</p> <p>7 letter; is that correct?</p> <p>8 A. It would have to do with -- what's the</p> <p>9 date on this? I don't see a date on here. So I</p> <p>10 can't, I can't decide what it's about. Without a</p> <p>11 date or anything else, I would --</p> <p>12 Q. Sure.</p> <p>13 A. -- assume it would be around the time</p> <p>14 they were doing an auction or something, but --</p> <p>15 Q. Sir, you can set that exhibit aside.</p> <p>16 MR. SCHWINGLER: 16?</p> <p>17 (Wilson 16 Received and Marked)</p> <p>18 BY MR. SCHWINGLER:</p> <p>19 Q. Mr. Wilson, we've handed you what's</p> <p>20 marked as Exhibit 16, which is a two-page</p> <p>21 document, bearing the Bates range PUB_EGGS_011761</p> <p>22 to 011762. The first page appears to be a letter</p>	<p style="text-align: right;">189</p> <p>1 this letter?</p> <p>2 A. It's a letter to all the egg companies</p> <p>3 about animal welfare.</p> <p>4 Q. Okay. And if you'd go down to the</p> <p>5 middle of the page where it says "action" on the</p> <p>6 left side?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And there's a paragraph to the right of</p> <p>9 that. The paragraph reads: "As a supplier to</p> <p>10 Publix, we are requesting that you agree to follow</p> <p>11 the guidelines as set forth in the above-mentioned</p> <p>12 report." Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And if you go up to the section above on</p> <p>15 background, the first sentence says: "On June</p> <p>16 27th, 2002, the Food Marketing Institute and the</p> <p>17 National Council of Chain Restaurants publicly</p> <p>18 released the FMI-NCCR Animal Welfare Report." do</p> <p>19 you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And so do you understand the sentence</p> <p>22 below on the page that we just read, that refers</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

49 (Pages 190 to 193)

<p style="text-align: right;">190</p> <p>1 to the above-mentioned report, do you understand</p> <p>2 the phrase "above-mentioned report" to be</p> <p>3 referring to the FMI-NCCR Animal Welfare Report?</p> <p>4 A. Yes.</p> <p>5 Q. Beside the sentence that comes after</p> <p>6 that says: "Further, Publix needs to receive in</p> <p>7 writing your company's commitment to adhere to</p> <p>8 these guidelines." Do you see that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. So is it your understanding that as of</p> <p>11 July 11, 2002, Publix was requiring its egg</p> <p>12 producers and suppliers to comply with the</p> <p>13 FMI-NCCR animal welfare Guidelines?</p> <p>14 A. It says here they were requesting it.</p> <p>15 In the letter, it says we're requesting. It</p> <p>16 doesn't say anything about requiring --</p> <p>17 Q. Okay.</p> <p>18 A. -- according to the letter.</p> <p>19 Q. In the next sentence that says:</p> <p>20 "Further, Publix needs to receive in writing your</p> <p>21 company's commitment to adhere to these</p> <p>22 guidelines." What do you understand that sentence</p>	<p style="text-align: right;">192</p> <p>1 Q. Do you now recall what it means?</p> <p>2 A. You just said it's National Council of</p> <p>3 Chain Restaurants.</p> <p>4 Q. Is Publix a member of the NCCR as well?</p> <p>5 A. FMI and NCCR is the same group, isn't</p> <p>6 it?</p> <p>7 Q. Are you familiar with whether FMI and</p> <p>8 NCCR are separate organizations or are they one</p> <p>9 organization, to your knowledge?</p> <p>10 A. To my knowledge, they are one</p> <p>11 organization.</p> <p>12 Q. And just to be clear, Publix has been a</p> <p>13 member of FMI at all times since 1999, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know when Publix became a member</p> <p>16 of FMI?</p> <p>17 A. No.</p> <p>18 Q. Do you know whether Publix employees</p> <p>19 have served in leadership roles within FMI?</p> <p>20 A. Yes.</p> <p>21 Q. Can you -- around 2002, were any Publix</p> <p>22 employees serving in leadership positions within</p>
<p style="text-align: right;">191</p> <p>1 to mean?</p> <p>2 A. That if you live up to their request,</p> <p>3 then we need to receive your letterhead saying</p> <p>4 that you're going to comply to the guidelines.</p> <p>5 Q. All right. You can set Exhibit 16</p> <p>6 aside, although we're likely come back to it.</p> <p>7 Does Publix have any internal committees</p> <p>8 or groups that were tasked with monitoring animal</p> <p>9 welfare issues?</p> <p>10 A. No.</p> <p>11 Q. Did Publix conduct any studies about</p> <p>12 animal welfare issues as they relate to egg-laying</p> <p>13 hens?</p> <p>14 A. No.</p> <p>15 Q. Okay. And you testified before that</p> <p>16 Publix was a member of FMI; is that correct?</p> <p>17 A. And the national chain, you said it just</p> <p>18 a minute ago, now I know what NCCR means.</p> <p>19 National Chain and --</p> <p>20 Q. National Council of Chain Restaurants.</p> <p>21 A. You asked me what that meant earlier. I</p> <p>22 didn't know what that was, no.</p>	<p style="text-align: right;">193</p> <p>1 FMI?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Who is that and what role?</p> <p>4 A. I'm not sure. I'm just sure there were.</p> <p>5 Q. Can you give me an example of a position</p> <p>6 within FMI that a Publix employee has held in the</p> <p>7 last, since 1999?</p> <p>8 A. Dan Maloney was a member of FMI. He was</p> <p>9 on the board. I don't know which position it was,</p> <p>10 but I know he was on the board.</p> <p>11 Q. Any other examples you're aware of?</p> <p>12 A. I'm sure there were a lot of other</p> <p>13 examples. I don't know all of them, no, sir.</p> <p>14 Q. Are you familiar with FMIs role, if any,</p> <p>15 in the development of the United Egg Producer's</p> <p>16 animal welfare guidelines?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Are you aware that FMI endorsed the cage</p> <p>19 space requirements of the UEP guidelines?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Was Publix aware that FMI endorsed the</p> <p>22 cage space requirements of the UEP guidelines in</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

50 (Pages 194 to 197)

<p style="text-align: right;">194</p> <p>1 2002?</p> <p>2 A. Yes.</p> <p>3 Q. Did Publix, in 2002, agree with FMI's</p> <p>4 support for the UEP guidelines?</p> <p>5 A. Yes.</p> <p>6 Q. And if you know, why did Publix agree</p> <p>7 with FMI support for the UEP guidelines?</p> <p>8 A. We thought it was right.</p> <p>9 Q. You say "we thought it was right." Are</p> <p>10 you referring to Publix as a company?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And when you say "we thought it was</p> <p>13 right", can you explain a little bit more what you</p> <p>14 mean by right?</p> <p>15 A. We were being told that was the right</p> <p>16 thing to do.</p> <p>17 Q. The right thing to do for the hens?</p> <p>18 A. Yes.</p> <p>19 Q. Was it Publix's understanding that hens</p> <p>20 that are provided more cage space, are more</p> <p>21 humanely treated?</p> <p>22 A. That's what we're being told.</p>	<p style="text-align: right;">196</p> <p>1 welfare standards pertaining to egg-laying hens?</p> <p>2 A. I think we -- Dave Cerra's letter asked</p> <p>3 for the companies to comply.</p> <p>4 Q. My question, did Publix require</p> <p>5 suppliers to comply with animal welfare standards</p> <p>6 for egg-laying hens?</p> <p>7 A. Um, it wasn't really an issue.</p> <p>8 Q. Why -- when you say it wasn't really an</p> <p>9 issue, what do you mean?</p> <p>10 A. They all complied before we asked them.</p> <p>11 Q. So Publix was never in a position where</p> <p>12 it had to issue an ultimatum to a supplier?</p> <p>13 A. No, sir.</p> <p>14 Q. At any point in time between 1999 and</p> <p>15 the end of 2008, did Publix require its supplier</p> <p>16 of private label liquid eggs to comply with animal</p> <p>17 welfare standards?</p> <p>18 A. Um, again, it was a non-issue.</p> <p>19 (Wilson 17 Received and Marked)</p> <p>20 BY MR. SCHWINGLER:</p> <p>21 Q. Mr. Wilson, we've handed you what's been</p> <p>22 marked as Exhibit 17, which is a multi-page</p>
<p style="text-align: right;">195</p> <p>1 Q. And who is telling you that?</p> <p>2 A. The egg producers.</p> <p>3 Q. Can you identify specifically which egg</p> <p>4 producers were communicating that to Publix?</p> <p>5 A. No, sir. Just the egg producers in</p> <p>6 general.</p> <p>7 Q. Was FMI advocating the cage space</p> <p>8 requirements as being --</p> <p>9 A. According to their documents, they were.</p> <p>10 Q. So FMI was, FMI was communicating to</p> <p>11 Publix that increased cage space improved the</p> <p>12 welfare of the laying hens, correct?</p> <p>13 A. I think they were, they were</p> <p>14 communicating that to the food market industry.</p> <p>15 Not just Publix.</p> <p>16 Q. Okay. But Publix did receive those</p> <p>17 communications.</p> <p>18 A. I'm sure they did, yes, sir. We're part</p> <p>19 of the food market industry.</p> <p>20 Q. At any point in time between 1999 and</p> <p>21 the end of 2008, did Publix require its suppliers</p> <p>22 of shell eggs to comply with any set of animal</p>	<p style="text-align: right;">197</p> <p>1 document bearing the Bates range</p> <p>2 PUB_EGGS_008104-008107. And I'll ask you to read</p> <p>3 just the first page of that document. The first</p> <p>4 page, for the Record, appears to be an e-mail from</p> <p>5 Mark Miley to several individuals on August 14th,</p> <p>6 2002. Subject line is Animal Welfare</p> <p>7 Guidelines-Papetti's.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. The second paragraph states: "As</p> <p>10 background, we have requested and (along with the</p> <p>11 meat department and other manufacturing</p> <p>12 facilities), have requested that all suppliers of</p> <p>13 meat or direct animal by-products to provide a</p> <p>14 letter, signed by a company official, stating they</p> <p>15 will adhere to the animal welfare guidelines</p> <p>16 proposed by FMI." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. The first sentence of the next paragraph</p> <p>19 reads: "Unfortunately, Papetti's response was</p> <p>20 less than we hoped for." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And then the paragraph goes on to state,</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

51 (Pages 198 to 201)

<p style="text-align: right;">198</p> <p>1 quote: "They claim they would be unable to 2 provide us with the requested letter unless they 3 were to increase the cost of our products." Do 4 you see that? 5 A. Yes. 6 Q. Okay. Next paragraph down: "We have 7 not had this type of response from any of our 8 suppliers, including those of our retail eggs." 9 Do you see that? 10 A. Yes. 11 Q. And then the next sentence says: "The 12 unfortunate consequence of Papetti's failing to 13 meet our requirements would be the need to 14 transition our egg business to another supplier." 15 Do you see that? 16 A. Yes. 17 Q. Do you understand that -- this sentence 18 to mean that at this point in time, in 2002, 19 Publix was requiring its egg suppliers to comply 20 with the FMI guidelines? 21 MR. GERMAINE: Objection. Asked and 22 answered.</p>	<p style="text-align: right;">200</p> <p>1 MR. SCHWINGLER: Oh, sure. 2 MR. GERMAINE: Just for the Record, I 3 think this relates to MSP suppliers and you 4 can continue to ask the witness questions 5 about it. 6 THE WITNESS: It has nothing to do with 7 grocery products. That's okay. 8 MR. SCHWINGLER: Okay. 9 MR. GERMAINE: I don't believe there's 10 ever any business between Michael Foods and 11 Publix on the retail side. 12 BY MR. SCHWINGLER: 13 Q. Sure. But the -- there was business 14 between Papetti's and Publix, correct? 15 A. Yes. 16 Q. My understanding of this e-mail is that 17 Publix is stating that because Papetti's cannot 18 comply with the FMI welfare guidelines without 19 increasing its cost, that Papetti's is failing to 20 meet Publix's requirements and is therefore going 21 to lose their business with Publix. Do you have a 22 different understanding?</p>
<p style="text-align: right;">199</p> <p>1 Q. You can answer. 2 MR. GERMAINE: Do you want the question 3 again? 4 A. It still says we've requested. 5 BY MR. SCHWINGLER: 6 Q. Just turning specifically to the phrase 7 "our requirements". 8 A. Yes, sir. 9 Q. You would agree that this e-mail is 10 talking about the FMI animal welfare guidelines, 11 correct? 12 A. Yes, sir. 13 Q. And that the e-mail then discusses that 14 Michael Foods is unable to comply with those 15 guidelines unless they increase the cost of their 16 products; is that correct? 17 A. Yes, sir. 18 MR. GERMAINE: Objection. It says 19 Papetti's. 20 MR. SCHWINGLER: I'm sorry. What did I 21 say? 22 MR. GERMAINE: Michael Foods.</p>	<p style="text-align: right;">201</p> <p>1 MR. GERMAINE: Objection. 2 A. My understanding is that they want to 3 raise costs in order to meet the FMI guidelines. 4 BY MR. SCHWINGLER: 5 Q. Well, you are not -- you did not receive 6 this e-mail, correct? 7 A. No, sir. 8 Q. You haven't seen this e-mail before 9 today, correct? 10 A. No. It's the first time I've read it. 11 Q. All right. Let's set it aside. We 12 talked about cage space. Other than cage space 13 per hen, are you familiar with any animal welfare 14 requirements that Publix imposes on its egg 15 suppliers? Let me rephrase it the other way. A 16 different way. 17 Is Publix aware that the, the UEP 18 guidelines also regulate back filling of cages? 19 A. Um, I don't. 20 Q. Are you familiar with the term "back 21 filling"? 22 A. No, sir.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

52 (Pages 202 to 205)

<p style="text-align: right;">202</p> <p>1 Q. Are you familiar with, with beak 2 trimming?</p> <p>3 A. Yes.</p> <p>4 Q. Is Publix aware that the UEP guidelines 5 regulate beak trimming of laying hens?</p> <p>6 A. Yes.</p> <p>7 Q. Is Publix aware that the UEP guidelines 8 regulate the ammonia levels in a house? Hen 9 house?</p> <p>10 A. No.</p> <p>11 Q. Between 1999 and the end of 2008, were 12 there any aspects of the UEP certified program 13 that Publix believed were particularly significant 14 or important?</p> <p>15 MR. GERMAINE: Objection to form.</p> <p>16 A. Um, no.</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. Let's see if we can just turn back to 19 Exhibit 16 and the second page of that document 20 briefly.</p> <p>21 I'll direct your attention to the 22 paragraph entitled "Background". The third</p>	<p style="text-align: right;">204</p> <p>1 A. Yes, sir.</p> <p>2 Q. And so would you agree that by July 11, 3 2002, compliance with the FMI Animal Welfare 4 Guidelines was required of all Publix egg 5 suppliers, correct?</p> <p>6 MR. GERMAINE: Objection to form.</p> <p>7 A. We're requesting it in July, yes. And 8 we're still doing business with somebody in August 9 that is not compliant, according to --</p> <p>10 Q. Where are you seeing that?</p> <p>11 A. According to 17. This is August 14th, 12 2002.</p> <p>13 Q. Returning to Exhibit 16, the sentence 14 that I just read, "in keeping with Publix's desire 15 to set higher standards in all our business 16 endeavors and to fully meet the needs of the 17 communities we serve", did Publix impose this 18 request or requirement for the FMI Animal Welfare 19 Guidelines -- withdrawn.</p> <p>20 Would you agree that the sentence that I 21 just read accurately states the reason why Publix 22 sent this letter in July 11, 2002 to its egg</p>
<p style="text-align: right;">203</p> <p>1 sentence of that paragraph reads: "In keeping 2 with Publix's desire to set a higher standard in 3 all our business endeavors and to fully meet the 4 needs of the communities we serve, Publix has 5 adopted the FMI-NCCR Animal Welfare Guidelines as 6 the standard requirement for all vendors to follow 7 in dealing with animal welfare."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Does this refresh your recollection on 11 whether Publix was requiring vendors to comply 12 with the FMI Animal Welfare Guidelines?</p> <p>13 A. Again, in the letter, it states that 14 we're requesting them to, to follow the 15 guidelines.</p> <p>16 Q. The sentence that I just read, you would 17 agree states that Publix has adopted the FMI-NCCR 18 Animal Welfare Guidelines as the standard 19 requirement for all vendors to follow in dealing 20 with animal welfare.</p> <p>21 A. Yes.</p> <p>22 Q. Do you agree with that?</p>	<p style="text-align: right;">205</p> <p>1 suppliers?</p> <p>2 A. To exceed the standards, highest 3 standards possible.</p> <p>4 Q. That Publix has a desire to set a higher 5 standard; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And Publix has a desire to fully meet 8 the needs of the communities it serves, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And those -- it's those objectives -- 11 would you agree that it's those objectives that 12 led Publix to send this letter to its egg 13 suppliers in July of 2002, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know who at -- within Publix was 16 responsible for making the decision to send out 17 this letter in Exhibit 16 in 2002?</p> <p>18 A. Dave Cerra's name is on the letter.</p> <p>19 Q. But you're not familiar -- you're not 20 aware of who made the decision to actually send 21 the letter?</p> <p>22 A. Dave Cerra wrote the letter and sent it.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

53 (Pages 206 to 209)

<p style="text-align: right;">206</p> <p>1 So he would've been the one that made the decision 2 to, to send the letter. He was the business 3 development director in charge. 4 Q. Dave Cerra is not the most senior 5 employee or was not the most senior employee 6 within Publix at that time? 7 A. No, sir. There's, there were -- there's 8 a lot of people that are higher than BDDs, but the 9 BDDs are in charge of their, their categories. 10 Q. When you say Dave Cerra made the 11 decision, are you making that statement based on 12 the fact that Dave Cerra signed the letter or do 13 you have other -- another basis for that 14 testimony? 15 A. His signature. 16 Q. Okay. So other than the fact that 17 Mr. Cerra signed that letter, you are not aware of 18 who decided to send that letter to customers? 19 A. No, sir. 20 Q. From 2002 to the end of 2011, do you 21 know the approximate percentage of shell eggs 22 purchased by Publix that were produced in</p>	<p style="text-align: right;">208</p> <p>1 BY MR. SCHWINGLER: 2 Q. I've handed you what's been marked as 3 Exhibit 18, which is a one-page document with a 4 Bates number PUB_EGGS_012953. At the top of the 5 document, it says Publix Super Markets. And 6 underneath the grid on the left side of the page, 7 it says: "Price -- Prices increased two cents per 8 dozen, 2-24-03 for animal welfare issues." Do you 9 see that? 10 A. Yes. 11 Q. Is this a reference to the two-cent 12 surcharge you just testified about? 13 A. Yes. 14 Q. Okay. And so, did that surcharge go 15 into effect on February 24th, 2003? 16 A. Um, yes. 17 Q. Do you know how long Publix was paying a 18 two-cent surcharge for certified eggs? 19 A. I believe we still are. 20 Q. Is that true for all of the, all of the 21 shell egg purchases? 22 A. Yes. Not -- that's Publix brand.</p>
<p style="text-align: right;">207</p> <p>1 compliance with the UEP certified program? 2 A. From 2002 until 2011? 3 Q. Until the end of 2008. 4 A. I would, I would guess one hundred 5 percent, but it depends on when our -- all of our 6 egg suppliers became compliant. If they were 7 compliant in 2002, then we would've gotten all of 8 our eggs, one hundred percent of them. 9 Q. Is your testimony the same for 2008 10 until present? 11 A. Yes. 12 Q. Are UEP certified eggs more expensive 13 for Publix to purchase than non-UEP certified 14 eggs? 15 A. There was a surcharge associated with 16 it. 17 Q. Do you recall what that surcharge was? 18 A. Two cents a dozen. 19 Q. All right. And I -- 20 MR. SCHWINGLER: Is this Exhibit 18? 21 THE COURT REPORTER: Yes. 22 (Wilson 18 Received and Marked)</p>	<p style="text-align: right;">209</p> <p>1 That's not the national brand. 2 Q. Okay. Did Publix pay a 3 two-cent-per-dozen surcharge on national brand 4 shell eggs? 5 A. It was included in their cost if we did. 6 I told you already we just paid cost for the 7 national brand eggs. 8 Q. Okay. So -- 9 A. It's not a formula-based price. 10 Q. Did the suppliers of national brand 11 shell eggs request or -- withdrawn. 12 Did the suppliers of national brand 13 shell eggs ever communicate to Publix that they 14 were increasing the prices they were charging as a 15 result of compliance with the animal welfare 16 guidelines? 17 A. Not that I'm aware of. 18 Q. All right. You can set Exhibit 18 19 aside. 20 MR. SCHWINGLER: Let me know when you 21 guys need a break. 22 MR. GERMAINE: I think it's probably a</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

54 (Pages 210 to 213)

<p style="text-align: right;">210</p> <p>1 good time if you're at a good spot.</p> <p>2 MR. SCHWINGLER: Yeah, now is as good a</p> <p>3 time as any.</p> <p>4 MR. GERMAINE: Okay.</p> <p>5 THE VIDEOGRAPHER: It's 2:32. We're</p> <p>6 going off the Record.</p> <p>7 (Proceedings recessed at 2:32 p.m.)</p> <p>8 (Proceedings resumed at 2:45 p.m.)</p> <p>9 THE VIDEOGRAPHER: It's 2:45. We're</p> <p>10 back on the Record.</p> <p>11 BY MR. SCHWINGLER:</p> <p>12 Q. Mr. Wilson, we've handed you what's been</p> <p>13 marked as Exhibit 19. It's a document bearing the</p> <p>14 Bates range PUB_EGGS_006846 and running until</p> <p>15 006851.</p> <p>16 (Wilson 19 Received and Marked)</p> <p>17 BY MR. SCHWINGLER</p> <p>18 Q. The first page of the document says at</p> <p>19 the top, Publix Brand Eggs and then Current Costs.</p> <p>20 Are you familiar with this document?</p> <p>21 A. This is the first time I've seen it.</p> <p>22 Q. Okay. My only question for this</p>	<p style="text-align: right;">212</p> <p>1 included in the cost of the goods. So it's still</p> <p>2 a surcharge in the cost of the goods, correct?</p> <p>3 It's just included in the cost of the goods.</p> <p>4 Q. I guess the broader question, are you</p> <p>5 aware, as you sit here, whether Publix is paying a</p> <p>6 two-cent surcharge for animal welfare compliant</p> <p>7 eggs?</p> <p>8 A. Yes.</p> <p>9 Q. You are. And is Publix paying a</p> <p>10 two-cent surcharge?</p> <p>11 A. It's included in the cost of the goods.</p> <p>12 (Wilson 20 Received and Marked)</p> <p>13 BY MR. SCHWINGLER:</p> <p>14 Q. Mr. Wilson, I've handed you what's been</p> <p>15 marked as Exhibit 20, which is a document bearing</p> <p>16 the Bates range PUB_EGGS_007158 through 007182.</p> <p>17 I'll direct your attention to the page numbered</p> <p>18 007166.</p> <p>19 MR. RAYLE: Excuse me. What was the</p> <p>20 number again, Counsel? The exhibit number?</p> <p>21 MR. SCHWINGLER: Exhibit 20.</p> <p>22 MR. RAYLE: Okay.</p>
<p style="text-align: right;">211</p> <p>1 document, if you look down below the grid, and you</p> <p>2 see in italics: "Quotations must include all</p> <p>3 costs associated with necessary animal care</p> <p>4 certifications." Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So is this consistent with your earlier</p> <p>7 testimony that for Publix -- I'm sorry. These are</p> <p>8 Publix brand eggs, you'd agree?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So earlier, I thought you had</p> <p>11 testified that for Publix brand eggs, Publix was</p> <p>12 still paying a two-cent surcharge for animal</p> <p>13 welfare guidelines.</p> <p>14 A. Yes, sir.</p> <p>15 Q. Would you agree that the statement on</p> <p>16 this document would indicate that animal welfare</p> <p>17 costs would be included in the quotation, itself?</p> <p>18 A. That's what it looks like.</p> <p>19 Q. Does that refresh your recollection at</p> <p>20 all about whether Publix is still paying a</p> <p>21 two-cent-per-dozen surcharge?</p> <p>22 A. I guess it's not a surcharge. It's just</p>	<p style="text-align: right;">213</p> <p>1 MR. SCHWINGLER: You can go off the</p> <p>2 Record.</p> <p>3 THE VIDEOGRAPHER: It's 2:51. We're</p> <p>4 going off the Record.</p> <p>5 (Stood at Ease)</p> <p>6 THE VIDEOGRAPHER: It's 2:52. We're</p> <p>7 back on the Record.</p> <p>8 BY MR. SCHWINGLER:</p> <p>9 Q. Mr. Wilson, the portion of Exhibit 20</p> <p>10 I'm asking you to look at begins on page 7166 and</p> <p>11 continues on to page 7167. Appears to be a letter</p> <p>12 from, letter addressed to someone named Steve from</p> <p>13 Tampa Farm Service. Was Tampa Farm Service a</p> <p>14 supplier of shell eggs to Publix?</p> <p>15 A. Yes.</p> <p>16 Q. And that was until they were acquired by</p> <p>17 somebody else; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. On page 7166, I'd like to direct your</p> <p>20 attention to the portion of the document -- first</p> <p>21 of all, do you recognize this document?</p> <p>22 A. That's the first I've seen it.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

55 (Pages 214 to 217)

<p style="text-align: right;">214</p> <p>1 Q. First time you've seen it. Do you know 2 who Steve -- 3 A. Yes, sir. 4 Q. Who is Steve? 5 A. Steve Hicks. He's been in other 6 e-mails. 7 Q. And Steve Hicks is with MSP, correct? 8 A. He was, yes, sir. 9 Q. Was. So you would agree that this is a, 10 a letter from a shell egg supplier to the head of 11 MSP, correct? 12 A. No. Steve's not the head. 13 Q. Not the head? 14 A. He was in charge of the -- 15 Q. Category review? 16 A. Yes, sir. 17 Q. So this is a letter from a shell egg 18 supplier to a Publix employee that was involved in 19 the category review process for shell eggs, 20 correct? 21 A. Yes, sir. 22 Q. Okay. Under the, under question number</p>	<p style="text-align: right;">216</p> <p>1 Q. How would you interpret this letter? 2 A. I'd interpret it as that's their spin on 3 the quotation. But that's not what I agree with. 4 This is their letter to us so, of course, they're 5 going to spin it that they're not making as much 6 as they need to be making. But, no, I don't -- I 7 mean, if you read through this right here, it 8 talks about the -- there's many sentences in here 9 about competitive nature of the marketplace and 10 how there's more eggs in the marketplace than 11 there needs to be in the southeast. I mean, it's 12 all in this letter. So that all goes into the 13 cost of goods. 14 Q. Did Tampa Farm Service supply Publix 15 brand shell eggs? 16 A. Yes. 17 Q. And you testified earlier that Publix 18 buys its Publix brand shell eggs off of an Urner 19 Barry quote, correct? 20 A. Yes. 21 Q. Now does Publix negotiate a -- do they 22 pay what the quote -- withdrawn.</p>
<p style="text-align: right;">215</p> <p>1 three, the document reads: "We thought we had 2 provided you with a very competitive quotation 3 when we returned our DSD bid forms on January 7, 4 2005, having returned almost the entire two-cent 5 pricing basis increase that Publix allowed its egg 6 suppliers two years ago when the Animal Care 7 Certified program was implemented." Do you see 8 that? 9 A. Yes. 10 Q. There's sort of an italicized 11 parenthetical discussion and the letter picks up: 12 "Therefore, we felt that reducing our bid to 13 essentially 'give back', end quote, that initial 14 price increase, while still facing those very real 15 ACC program costs, would result in a very 16 competitive quote." Do you see that? 17 A. Yes. 18 Q. Would you agree this correspondence 19 suggests that Tampa Farm Service was no longer 20 charging a two-cent surcharge for animal welfare 21 eggs at this point in time? 22 A. No, I would not agree with that.</p>	<p style="text-align: right;">217</p> <p>1 Does Publix negotiate a discount off of 2 the Urner Barry market for -- 3 A. Exhibit 18 -- 4 Q. -- shell eggs? Yes. 5 A. Exhibit 18. 6 Q. Yep. What about Exhibit 18? 7 A. There's our cost right there. 8 Q. So are you indicating that Exhibit 18, 9 that that grid reflects the discount off of the 10 market price? 11 A. At that time on 2-24-03, yes, sir. 12 Q. Okay. But the price that Publix was 13 paying at a given point in time for a shell egg 14 that would become a Publix brand shell egg, that 15 was determined based on a negotiated discount off 16 of the Urner Barry market, correct? 17 A. Yes, sir. 18 Q. Okay. Did -- I just need you to explain 19 to me, you've testified if Publix is still paying 20 a two-cent surcharge for welfare eggs. Is that 21 something that's added on to the price after the 22 discount is imposed?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

56 (Pages 218 to 221)

<p style="text-align: right;">218</p> <p>1 A. It was in '03. Now it's just included 2 in the cost. 3 Q. Now it's just sort of, whatever the 4 discount happens to be for a given supplier, um, 5 that discount is two cents less than it would've 6 been but for the animal welfare program? 7 A. Could be more than two cents because the 8 animal welfare program. There's less supply now. 9 Q. So is it your, is it your testimony that 10 the cost increase resulting from the welfare 11 program, has been -- 12 A. Passed on? 13 Q. -- incorporated into the market price, 14 itself? 15 A. Now, yes, sir. 16 Q. Okay. But it's not incorporated into 17 the discount that Publix would negotiate relative 18 to the market price, correct? 19 A. No, sir. 20 Q. Okay. I'm sorry. That -- that could be 21 an ambiguous question. When you say no, sir, are 22 you testifying that the two-cent surcharge is not</p>	<p style="text-align: right;">220</p> <p>1 these documents here, brought to Dave Cerra's 2 attention that the UEP was going to impose these 3 guidelines and that animal welfare was a hot 4 button issue. It was going to cost them more 5 money because they were going to be less 6 efficient. So that they were going to need to 7 charge us a surcharge to help cover that cost. 8 Q. Did Publix understand why shell egg 9 producers would be less efficient under the animal 10 welfare guidelines? 11 A. Um, we understood that there would be 12 less birds. And like I said, Mike Bynum brought 13 that information to, to Dave Cerra. Mike Bynum 14 was a long-time supplier for Publix Super Markets. 15 Q. Does Publix currently support the 16 elimination of the UEP certified program? 17 A. Um, there needs to be some kind of 18 program. I don't know if the UEP program is the 19 right one or not. I don't know if I'm -- I don't 20 think we really have a -- there needs to be some 21 kind of standard. 22 Q. Publix's position is that there, there</p>
<p style="text-align: right;">219</p> <p>1 included in the discount? That Publix would 2 negotiate with the supplier? 3 MR. GERMAINE: Objection to form. 4 BY MR. SCHWINGLER: 5 Q. Yeah. Let me break it this down into 6 its parts. 7 So as I understand it, there's two 8 components to the price that Publix pays for shell 9 eggs that become Publix branded shell eggs. 10 There's the Urner Barry quote and there's a 11 negotiated discount; is that correct? 12 A. Yes. 13 Q. Okay. Is it your testimony that the 14 costs of the animal welfare programs are now 15 accounted for by the Urner Barry piece of that 16 price? 17 A. Yes. 18 Q. Okay. Thank you. Why did Publix agree 19 to a two-cent surcharge in 2003 for animal welfare 20 certified eggs? 21 A. It's my recollection that Mike Bynum, 22 who was in charge of Tampa Farms, is in some of</p>	<p style="text-align: right;">221</p> <p>1 ought to be a set of guidelines that regulate how 2 laying hens are treated? 3 A. Animal welfare in general, yes, sir. 4 Q. Does Publix believe that egg-laying hens 5 should receive a minimum amount of floor space in 6 cages? 7 A. We're not scientists, so we can't make 8 that determination. 9 Q. If scientists were to recommend a 10 minimum amount of floor space in cages, would 11 Publix -- is it Publix's position that egg-laying 12 hens should be given a scientifically justified 13 amount of cage space? 14 MR. GERMAINE: Objection to form. 15 A. I can't answer that question. 16 BY MR. SCHWINGLER: 17 Q. Do you not understand the question? 18 A. I understand what you're saying, but 19 I've already told you, we can't make that 20 determination. 21 Q. Sure. So to be clear, what I'm looking 22 for is what Publix's position is. So when you say</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

57 (Pages 222 to 225)

<p style="text-align: right;">222</p> <p>1 "I can't answer the question", I just need to -- I 2 need to rephrase it in a way you can answer it or 3 I need to get an answer. So if the answer is "I 4 don't know", that's fine. But can we -- let me 5 just reask it. 6 Does Publix believe that egg-laying hens 7 should be given an amount, a minimum amount of 8 cage space -- withdrawn. 9 Does Publix believe that egg-laying hens 10 should receive a scientifically justified amount 11 of cage space? 12 MR. GERMAINE: Objection to form. 13 A. Publix believes that egg-laying hens 14 should be treated humanely. 15 BY MR. SCHWINGLER: 16 Q. And what -- to Publix, what does the 17 term "humanely" mean? 18 A. Proper treatment. 19 Q. And proper treatment as defined by who? 20 A. Governing body. 21 Q. Would FMI be an example of a governing 22 body that would define the proper standards for</p>	<p style="text-align: right;">224</p> <p>1 A. No, sir. 2 Q. Did Publix have any contact with Sparboe 3 Farms about animal welfare issues? 4 A. No, sir. USDA does have guidelines, so 5 I would have to say that USDA guidelines do. 6 Q. When you say the USDA has guidelines, 7 what are you referring to? 8 A. USDA guidelines. 9 Q. Are those regulations that apply to all 10 hens in the country? 11 A. Yes. 12 Q. Okay. Are you -- are you familiar with 13 the USDA Process Verified Program? 14 A. No. 15 Q. So when you're referring to USDA 16 guidelines, you're not referring to the Process 17 Verified Program? 18 A. No, sir. 19 Q. Did any -- has Publix had any contact 20 with Ken Clippen? 21 A. No, sir. Not that I'm aware of. No, 22 sir.</p>
<p style="text-align: right;">223</p> <p>1 treating hens? 2 A. They have in the past. 3 Q. Is Publix -- start over. Has Publix, at 4 any point between 1999 and the end of 2008, did 5 Publix contact anyone about animal welfare 6 programs other than the UEP certified program? 7 MR. GERMAINE: Objection to form. 8 MR. SCHWINGLER: Can I get a 9 clarification of the objection? 10 MR. GERMAINE: It lacks foundation. 11 We've never established that any exists. 12 BY MR. SCHWINGLER: 13 Q. Is Publix aware of any animal welfare, 14 programs other than UEP certified program, between 15 1999 and the end of 2008? 16 A. For laying hens? 17 Q. For laying hens. 18 A. No, sir. 19 Q. So was Publix aware that Defendant 20 Sparboe Farms was pursuing an alternative animal 21 welfare program at various point in time between 22 2002 and 2008?</p>	<p style="text-align: right;">225</p> <p>1 Q. At any point between 1999 and the end of 2 2008, was Publix contacted by activist groups 3 regarding the treatment of egg-laying hens that 4 supplied Publix with shell eggs? 5 A. Yes. 6 Q. Which groups contacted Publix? 7 A. PETA. 8 Q. When did PETA contact Publix? 9 A. Between those time periods. 10 Q. Any other groups? 11 A. The American Humane Society -- no. The 12 Humane Society of the United States. 13 Q. Do you know when the Humane Society 14 contacted Publix about egg-laying hens? 15 A. During that time period also. 16 Q. The time period I identified was 1999 17 through the end of 2008, correct? 18 A. Yes. 19 Q. Can you provide anymore specificity 20 about when PETA or the Humane Society contacted 21 Publix about egg-laying hens? 22 A. No.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

58 (Pages 226 to 229)

<p style="text-align: right;">226</p> <p>1 Q. Do you know whether PETA or the Humane 2 Society contacted Publix about animal welfare 3 issues prior to July 2002? 4 A. I'm sure they did. 5 Q. Does Publix monitor activists -- 6 withdrawn. 7 Does Publix monitor what animal rights 8 activists say with respect to Publix's 9 competitors? For example, can you give me an 10 example of a competing grocery chain that Publix 11 considers to be one of its competitors? 12 A. Kroger. 13 Q. Kroger. At any point between 1999 and 14 the end of 2008, did Publix monitor whether animal 15 rights groups were interacting with Kroger about 16 animal welfare issues? 17 A. No, sir. Monitor, no, sir. 18 Q. Would you use a different word than 19 monitoring? 20 A. No, sir. 21 Q. Was -- at any point between 1999 and the 22 end of 2008, did Publix receive information</p>	<p style="text-align: right;">228</p> <p>1 Q. Beyond the fact that it's a periodical, 2 are you familiar with the subject matter of the 3 publication? 4 A. It talks about grocery. 5 Q. Is this a, is this a periodical that 6 Publix would receive on a regular basis? 7 A. Yes. 8 Q. And when is this article, or when is 9 this particular issue dated? I think on the front 10 page it says January 1st, 2002; is that correct? 11 A. Yes. 12 Q. If you look on the second page, numbered 13 6506, there's two columns in the article on the 14 right column -- the second full paragraph in the 15 right column beginning with the word "after" 16 states: After declaring victory over McDonald's, 17 Burger King and Wendy's, PETA turns its attention 18 to the records of other companies including ten of 19 the nation's largest grocery retailers." Do you 20 see that? 21 A. Yes. 22 Q. At this point, was -- in January of</p>
<p style="text-align: right;">227</p> <p>1 regarding whether animal rights groups were 2 contacting any of Publix's competitors? 3 A. Yes. 4 Q. Can you give me an example? 5 A. Newspaper articles. 6 (Wilson 21 Received and Marked) 7 THE COURT REPORTER: 21. 8 BY MR. SCHWINGLER: 9 Q. Mr. Wilson, I've handed you what's been 10 marked as Exhibit 21, which is a document bearing 11 the Bates range PUB_EGGS_006505 through 006507. 12 On the front page appears to be an issue of a 13 publication called the Progressive Grocer dated 14 January 1st, 2002. 15 Mr. Wilson, are you familiar with this 16 particular document? 17 A. This periodical? 18 Q. Yes. Sorry, yeah. First things first. 19 Are you familiar with the Progressive Grocer? 20 A. Yes. 21 Q. What is Progressive Grocer? 22 A. It's a periodical.</p>	<p style="text-align: right;">229</p> <p>1 2002, was PETA contacting Publix about animal 2 welfare issues? 3 A. Yes, I'm sure they were. We've already 4 established that. 5 Q. You go on to the next statement: On its 6 vegetarian campaign web site goveg.com, PETA urges 7 consumers not to shop at Albertson's, Costco, 8 Kroger, Meijer, Publix, Safeway, Super Value, 9 Wal-Mart and Winn Dixie until they agree to meet 10 or exceed the standards set in the group 11 settlement with McDonald's." Do you see that? 12 A. Yes. 13 Q. Was Publix familiar with an agreement 14 between McDonald's and PETA at that point in time 15 related to animal welfare issues? 16 A. It was in the news. 17 Q. Does this article generally demonstrate 18 the types of pressure that Publix was receiving 19 from animal welfare activists in early 2002 20 related to egg-laying hens? 21 A. Would you repeat that, please? 22 MR. SCHWINGLER: Could you read it?</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

59 (Pages 230 to 233)

<p style="text-align: right;">230</p> <p>1 (Reporter Complied with Above)</p> <p>2 A. Yes.</p> <p>3 Q. You can set that aside.</p> <p>4 (Wilson 22 Received and Marked)</p> <p>5 BY MR. SCHWINGLER:</p> <p>6 Q. Mr. Wilson, you've been handed what's</p> <p>7 been marked as Exhibit 22, which is a document</p> <p>8 bearing the Bates range PUB_EGGS_ 011786 through</p> <p>9 011788. And at the top of the first page, the</p> <p>10 document appears to be a correspondence from</p> <p>11 Animal Rights Foundation of Florida, Inc. To</p> <p>12 Charles Jenkins, Jr., CEO, Publix Super Markets,</p> <p>13 Inc. dated August 10th, 2001.</p> <p>14 Have you seen this letter before?</p> <p>15 A. No, sir, I have not.</p> <p>16 Q. Are you familiar with the Animal Rights</p> <p>17 Foundation of Florida?</p> <p>18 A. Yes.</p> <p>19 Q. Between 1999 and the end of 2008, to the</p> <p>20 best of your knowledge, how often did Publix</p> <p>21 receive correspondence from the Animal Rights</p> <p>22 Foundation of Florida relating to egg-laying hens?</p>	<p style="text-align: right;">232</p> <p>1 Q. At the bottom of the first page under</p> <p>2 number five, one of their demands appears to be:</p> <p>3 "Stop buying eggs from suppliers that give hens</p> <p>4 less than 85 square inches of space per bird." Do</p> <p>5 you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Is that an example of a demand Publix</p> <p>8 would consider to be unreasonable?</p> <p>9 A. No, sir. But I do, I do see where they</p> <p>10 have on here: "Publix suppliers cram hens into</p> <p>11 cages with about as much space per bird as</p> <p>12 one-half sheet of standard paper. Tens of</p> <p>13 thousands of birds in filthy ammonia-laden sheds.</p> <p>14 This abuse, which is illegal in much of Europe and</p> <p>15 has been deemed cruel by the entire European</p> <p>16 Union, must be phased out."</p> <p>17 They don't want us having any eggs out</p> <p>18 of cages, period, which is unreasonable. They</p> <p>19 also sustained.</p> <p>20 (Conference call announcer interrupts)</p> <p>21</p> <p>22 A. (continuing) They also say in number</p>
<p style="text-align: right;">231</p> <p>1 A. How many times did you say?</p> <p>2 Q. Yeah, let me rephrase that. Are you</p> <p>3 aware of any other correspondence from the Animal</p> <p>4 Rights Foundation of Florida to Publix between</p> <p>5 1999 and 2008 that relates to the welfare of</p> <p>6 egg-laying hens?</p> <p>7 A. I'M not aware of any, but I'm sure we</p> <p>8 did. They're a big part of Florida.</p> <p>9 Q. Would you, would you agree that Animal</p> <p>10 Rights Foundation of Florida is a well-known group</p> <p>11 within Florida?</p> <p>12 A. Um, I don't know how well known they</p> <p>13 are. They have 4,000 members.</p> <p>14 Q. Would you -- does Publix take seriously</p> <p>15 the viewpoints of the Animal Rights Foundation of</p> <p>16 Florida?</p> <p>17 A. If they are a Publix customer, we take</p> <p>18 every viewpoint seriously. But I mean, their,</p> <p>19 their claims or their demands are unreasonable.</p> <p>20 Q. In this letter, you would, you would</p> <p>21 state that their demands were unreasonable?</p> <p>22 A. Yes, sir.</p>	<p style="text-align: right;">233</p> <p>1 six: "Stop buying eggs from suppliers that starve</p> <p>2 and dehydrate hens in order to increase egg</p> <p>3 production. A process known as forced moulting.</p> <p>4 Outlawed in Europe, this process used to force" --</p> <p>5 no one does forced moulting.</p> <p>6 "Buy only chickens raised truly free</p> <p>7 roaming." That's kind of unrealistic. There's</p> <p>8 not enough land space to supply enough chickens</p> <p>9 for free roaming.</p> <p>10 They talk about do not debeak chickens.</p> <p>11 If you don't debeak chickens, they rip each other</p> <p>12 apart.</p> <p>13 There's just a lot of unrealistic</p> <p>14 demands in this letter. So, no, 85 square inches,</p> <p>15 I'm not saying that's unnecessarily unrealistic,</p> <p>16 but there's a lot of unrealistic parts of this</p> <p>17 letter when you look at it as a whole.</p> <p>18 Q. This letter was sent in August of 2001,</p> <p>19 correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So that's before Publix requested that</p> <p>22 its egg suppliers comply with the FMI welfare</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

60 (Pages 234 to 237)

<p style="text-align: right;">234</p> <p>1 guidelines, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Set that document aside.</p> <p>4 (Wilson 23 Received and Marked)</p> <p>5 BY MR. SCHWINGLER:</p> <p>6 Q. Mr. Wilson, you've been handed what's</p> <p>7 been marked as Exhibit 23, which is a document</p> <p>8 with a Bates range PUB_EGGS_ 011856 through</p> <p>9 011857. Appears to be a letter from the Animal</p> <p>10 Rights Foundation of Florida to Charley Jenkins,</p> <p>11 Jr. CEO, Publix Super Markets, dated October 23rd,</p> <p>12 2006.</p> <p>13 I'll give you a moment to review. Once</p> <p>14 you've had a chance, please let me know.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Are you familiar with this document?</p> <p>17 A. I see it now.</p> <p>18 Q. Have you ever seen this document before</p> <p>19 today?</p> <p>20 A. Not that I'm aware of, no, sir.</p> <p>21 Q. Are you familiar with the Animal Rights</p> <p>22 Foundation of Florida?</p>	<p style="text-align: right;">236</p> <p>1 Q. Does Publix disagree with the statement</p> <p>2 "that birds in battery cages suffer immensely"?</p> <p>3 A. Yes.</p> <p>4 Q. And if you read, you can read to</p> <p>5 yourself, the final paragraph in this letter.</p> <p>6 A. Yes, sir.</p> <p>7 Q. Would you agree that this letter, much</p> <p>8 like the letter five years earlier from the same</p> <p>9 organization, was encouraging Publix to sell only</p> <p>10 shell eggs or caged-free eggs?</p> <p>11 A. Yes.</p> <p>12 Q. That was 2006. Does Publix still</p> <p>13 receive pressure from animal rights activists</p> <p>14 about selling only cage-free eggs?</p> <p>15 A. Yes.</p> <p>16 (Wilson 24 Received and Marked)</p> <p>17 BY MR. SCHWINGLER:</p> <p>18 Q. Mr. Wilson, you've been handed what's</p> <p>19 marked as Exhibit 24, which is a series of</p> <p>20 documents Bates numbered PUB_EGGS_011874 through</p> <p>21 011877. I'll represent, for Counsel's benefit,</p> <p>22 these -- this four-page document was actually</p>
<p style="text-align: right;">235</p> <p>1 A. The same one from the letter before.</p> <p>2 Q. So this is the same organization?</p> <p>3 A. Same 4,000 members.</p> <p>4 Q. What is the Publix Green Wise market?</p> <p>5 A. It was a store opening in Tampa. We</p> <p>6 have three Green Wise markets.</p> <p>7 Q. And what is -- what was the, or how is a</p> <p>8 Green Wise market different from a regular Publix</p> <p>9 location?</p> <p>10 A. It's, it's not as different now as it</p> <p>11 was when we opened them, but when we opened them,</p> <p>12 it sold all organic, natural foods.</p> <p>13 Q. And if you go down to the fourth full</p> <p>14 paragraph starting with "egg-laying hens". It</p> <p>15 states that: "Egg-laying hens in bare wire cages</p> <p>16 are the most intensively confined animal in the</p> <p>17 United States. The cages are so restrictive that</p> <p>18 birds cannot even stretch their wings, let alone</p> <p>19 engage in other natural behaviors such as nesting,</p> <p>20 perching and dust bathing. Birds in battery cages</p> <p>21 suffer immensely." Do you see that?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">237</p> <p>1 produced as four separate files. We believe it's</p> <p>2 a single document, but it was produced as four</p> <p>3 separate files.</p> <p>4 I'll specifically direct your attention</p> <p>5 to the page starting on 011875. If you could read</p> <p>6 just the first paragraph that says "Number One,</p> <p>7 Stockholder Proposal."</p> <p>8 A. Yes, sir.</p> <p>9 Q. First of all, who is Jerry Schinella, if</p> <p>10 you know?</p> <p>11 A. I'm not sure.</p> <p>12 Q. Do you know who Dave Bornmann is?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Who is Dave Bornmann?</p> <p>15 A. Senior vice-president, corporate</p> <p>16 purchasing.</p> <p>17 Q. What are his responsibilities, if you</p> <p>18 know?</p> <p>19 A. He's in charge of everything corporate</p> <p>20 purchasing.</p> <p>21 Q. Would he be superior to the business</p> <p>22 development director in charge of eggs?</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

61 (Pages 238 to 241)

<p style="text-align: right;">238</p> <p>1 A. Yes.</p> <p>2 Q. Do you know who Sam Middlebrook is?</p> <p>3 A. Yes.</p> <p>4 Q. Who is Sam Middlebrook?</p> <p>5 A. He was a business development director</p> <p>6 in the meat department.</p> <p>7 Q. Do you know who Tina Johnson is?</p> <p>8 A. Yes.</p> <p>9 Q. Who's that?</p> <p>10 A. She is a -- she's an adviser to Ed</p> <p>11 Crenshaw.</p> <p>12 Q. Who's Ed Crenshaw?</p> <p>13 A. He is the CEO of Publix Super Markets.</p> <p>14 Q. Was he the CEO of Publix in February</p> <p>15 2009?</p> <p>16 A. I think February 2009, yes. No, he may</p> <p>17 have been president then instead of CEO. I don't</p> <p>18 know the exact date of change over.</p> <p>19 Q. Turning back to the next page under the</p> <p>20 Number One Stockholder Proposal, are you familiar</p> <p>21 with what a stockholder proposal is?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">240</p> <p>1 Q. Are you familiar with this shareholder</p> <p>2 resolution?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that the shareholders</p> <p>5 actually voted on that resolution?</p> <p>6 A. I believe they did, yes, sir.</p> <p>7 Q. Did they defeat or approve the</p> <p>8 resolution?</p> <p>9 A. Defeated it.</p> <p>10 Q. Defeated it. If you go down the page,</p> <p>11 do you see the bold line, "Publix's Statement in</p> <p>12 Opposition to Stockholder Proposal"?</p> <p>13 A. Yes.</p> <p>14 Q. And then the second sentence of that</p> <p>15 first paragraph: "However, the Board of Directors</p> <p>16 recommends a vote against the following</p> <p>17 stockholder proposal based on the reasons set</p> <p>18 forth below." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And when you go to the bullet point that</p> <p>21 says eggs, it says: "Eggs. The company purchases</p> <p>22 fresh eggs from suppliers that have implemented</p>
<p style="text-align: right;">239</p> <p>1 Q. What would that be?</p> <p>2 A. It's a proposal to make a change in the</p> <p>3 company.</p> <p>4 Q. And can a stockholder raise a proposal</p> <p>5 to be voted on by all of the stockholders?</p> <p>6 A. Yes.</p> <p>7 Q. And this would occur at an annual</p> <p>8 meeting?</p> <p>9 A. Yes.</p> <p>10 Q. Going down the page a bit, it says in</p> <p>11 bold, "Shareholder Resolution Regarding Animal</p> <p>12 Welfare Progress Report." Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. It says: "Resolved, that</p> <p>15 shareholders request that the Board of Directors</p> <p>16 issue a report detailing any progress made toward</p> <p>17 adopting animal welfare policies pertaining to the</p> <p>18 purchase of pork, eggs and poultry. The report</p> <p>19 should be proposed by October of 2009 and should</p> <p>20 exclude proprietary information." Do you see</p> <p>21 that?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">241</p> <p>1 programs in the interest of animal welfare. One</p> <p>2 hundred percent of the eggs purchased by the</p> <p>3 company are either cage free or certified by the</p> <p>4 United Egg Producers, UEP, a trade association</p> <p>5 representing most US egg farmers and companies.</p> <p>6 The UEP Certified Program Standards are the</p> <p>7 strictest in the industry." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So is it true that Publix management</p> <p>10 opposed the shareholder proposal at issue in this</p> <p>11 e-mail, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And in explaining why the proposal</p> <p>14 should be voted down, Publix referred to the UEP</p> <p>15 Certified Program, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And Publix stated that it purchases its</p> <p>18 eggs from UEP certified companies or from cage</p> <p>19 free, correct?</p> <p>20 A. Yes.</p> <p>21 Q. So as of February of 2009, when this</p> <p>22 correspondence was written, would you agree that</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

62 (Pages 242 to 245)

<p style="text-align: right;">242</p> <p>1 in Publix's view, the UEP Certified Guidelines 2 provided a satisfactory response to animal rights 3 activists' concerns with egg-laying hens? 4 MR. GERMAINE: Sorry. Can I get that 5 back again? 6 MR. SCHWINGLER: Yeah. 7 (Reporter Complied with Above) 8 MR. GERMAINE: You can answer if you're 9 able. 10 A. We used that as a, as a reasoning. Yes. 11 We did use that as a reasoning for animal welfare 12 activists. 13 BY MR. SCHWINGLER: 14 Q. So just to be clear, Publix relied upon 15 the UEP certified guidelines in explaining why 16 additional consideration of animal welfare 17 concerns was unnecessary at that time; is that 18 correct? 19 A. In 2009, after 2008? 20 Q. Yes. 21 A. For this document? 22 Q. Yes.</p>	<p style="text-align: right;">244</p> <p>1 review any materials in preparation for today's 2 deposition that addressed antitrust investigations 3 by federal or state law enforcement agencies? 4 A. Did I review any materials that 5 addressed antitrust -- 6 MR. GERMAINE: I'm going to object to 7 that question and counsel you do not answer 8 if it reveals substance of communication with 9 counsel. 10 A. I'm not going to answer that question. 11 MR. SCHWINGLER: As the witness is 12 designated to testify on Publix's behalf -- I 13 tell you what. Can we go off the Record for 14 five minutes? Not even. A couple minutes. 15 THE VIDEOGRAPHER: It's 3:32. We're 16 going off the Record. 17 (Proceedings recessed at 3:32 p.m.) 18 Proceedings resumed at 3:34 p.m.) 19 THE VIDEOGRAPHER: It's 3:34. We're 20 back on the Record. 21 BY MR. SCHWINGLER: 22 Q. I apologize, Mr. Wilson. I understand</p>
<p style="text-align: right;">243</p> <p>1 A. Yes. 2 Q. You can set that aside. Was Publix ever 3 contacted by federal or state law enforcement 4 officials in connection with any investigation of 5 possible antitrust violations regarding the 6 production or sale of shell eggs? 7 A. I'd have to rely on our counsel for that 8 one. 9 Q. So you're not aware of whether Publix 10 has -- was contacted by law enforcement officials 11 regarding any investigations of antitrust 12 violations related to shell eggs? 13 A. I'd have to rely on our counsel for 14 that. 15 Q. When you say "I'd have to rely on our 16 counsel", are you testifying that you don't know? 17 A. No. 18 Q. So do you, do you know whether Publix -- 19 A. I don't. I don't know personally. 20 Q. You don't know? 21 A. No, sir. 22 Q. Okay. And were you present -- did you</p>	<p style="text-align: right;">245</p> <p>1 that the Defendants did not include the topic of 2 contact with law enforcement officials in the 3 deposition notice to Publix, so you're not 4 designated to testify in that behalf. 5 I'm not looking for you to reveal any 6 communications with counsel, but if you can, just 7 answer the following question: Are you aware of 8 whether Publix has had any contact with law 9 enforcement officials relating to the 10 investigation of possible antitrust violations by 11 egg product companies or shell egg companies? 12 MR. GERMAINE: Objection. Asked and 13 answered. You can answer if you know. 14 A. I don't know. 15 BY MR. SCHWINGLER: 16 Q. Okay. Thank you. Does Publix currently 17 purchase cage-free eggs? 18 A. Yes. 19 Q. Between 1999 and the end of 2008, did 20 Publix purchase cage-free eggs at any point in 21 time? 22 A. Yes.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

63 (Pages 246 to 249)

<p style="text-align: right;">246</p> <p>1 Q. Are you aware of when Publix decided to 2 begin purchasing cage-free eggs?</p> <p>3 A. After the first supplier brought them to 4 us and we put them in our stores.</p> <p>5 Q. Are you aware of when that occurred?</p> <p>6 A. Actual date that they decided to add 7 them to the --</p> <p>8 Q. Ballpark would be fine.</p> <p>9 A. I can't give you a fair answer on that.</p> <p>10 Q. Do you know whether it was in the 1990s?</p> <p>11 A. I would say it was between '90 and 2008. 12 That would be a fair ballpark answer.</p> <p>13 Q. Between 1990 and 2008?</p> <p>14 A. Somewhere in that time period.</p> <p>15 Q. But anything more specific you're not 16 aware of?</p> <p>17 A. Um, the first time cage-free eggs hit 18 our shelves, I could not tell you the date of 19 that, no, sir.</p> <p>20 Q. Do you know who was involved in the 21 decision to begin selling cage-free eggs to 22 Publix?</p>	<p style="text-align: right;">248</p> <p>1 THE VIDEOGRAPHER: Our total time at 2 this point is 4 hours, 51 minutes -- almost 3 52 minutes.</p> <p>4 MR. SCHWINGLER: Let's go off the 5 Record.</p> <p>6 THE VIDEOGRAPHER: It's 3:38. We're 7 going off record. 8 (Proceedings recessed at 3:38 p.m.) 9 (Proceedings resumed at 3:52 p.m.)</p> <p>10 THE VIDEOGRAPHER: It's 3:52. We're 11 back on the Record.</p> <p>12 BY MR. SCHWINGLER:</p> <p>13 Q. Mr. Wilson, I have just a few more 14 questions for you.</p> <p>15 A. Yes, sir.</p> <p>16 Q. I asked you some questions earlier today 17 that I ought to have asked from the time period 18 1999 through 2008, but I asked from 2002 to 2008. 19 So we're not going to go through all of them 20 again, but I just have a little bit of clean up in 21 that respect.</p> <p>22 Your testimony today has been that</p>
<p style="text-align: right;">247</p> <p>1 A. That would be the buyer, the category 2 manager and the business development director.</p> <p>3 Q. And are you familiar with what factors 4 informed that decision?</p> <p>5 A. Customer demand. Cost. Reliability. 6 Product quality. Along with hundreds of other 7 factors.</p> <p>8 Q. Were Publix's customers demanding that 9 Publix begin selling cage-free eggs?</p> <p>10 A. I think there was a demand for the 11 product.</p> <p>12 Q. Are cage-free eggs more expensive for 13 Publix to purchase than eggs from caged hens?</p> <p>14 A. Yes.</p> <p>15 Q. Did Publix begin selling cage-free eggs 16 because other retailers were already selling them?</p> <p>17 A. I don't know.</p> <p>18 MR. SCHWINGLER: I just need, at some 19 point to, you know, clear my head and think 20 if I have anything else to clear up, but I'm 21 sort of done with my principal examination. 22 How long have we been on the Record?</p>	<p style="text-align: right;">249</p> <p>1 Publix buys the shell eggs it uses for Publix 2 brand shell eggs using a negotiated discount off 3 of the Urner Barry market price; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Was that also true from 1999 through 6 2002?</p> <p>7 A. Yes.</p> <p>8 Q. At any point between 1999 and 2002, did 9 Publix purchase its Publix brand shell eggs on a 10 different basis?</p> <p>11 A. No.</p> <p>12 Q. I believe you testified earlier that 13 Publix purchases some national branded shell eggs 14 on a fixed-cost basis; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Was that also true between 1999 and 17 2002?</p> <p>18 A. Yes.</p> <p>19 Q. At any point between 1999 and 2002, did 20 Publix purchase the national branded shell eggs on 21 any basis other than a fixed-cost basis?</p> <p>22 A. No.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

64 (Pages 250 to 253)

<p style="text-align: right;">250</p> <p>1 Q. I believe you testified earlier that</p> <p>2 Publix purchases its private label liquid egg</p> <p>3 substitutes based on a Urner Barry market quote;</p> <p>4 is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Was that true between 1999 and 2002?</p> <p>7 A. As far as I know, yes, sir.</p> <p>8 Q. And I also believe you testified that</p> <p>9 Publix purchases national branded liquid egg</p> <p>10 substitutes such as Egg Beaters on a fixed-cost</p> <p>11 basis; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Was that also the case between 1999 and</p> <p>14 2002?</p> <p>15 A. Yes.</p> <p>16 Q. Earlier today, you testified about the</p> <p>17 principal shell egg suppliers for Publix and I</p> <p>18 believe you noted Hillendale, Tampa Farms,</p> <p>19 Cal-Maine and, I may be missing one other, Country</p> <p>20 Charm?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Were those the principal shell egg</p>	<p style="text-align: right;">252</p> <p>1 employees, Publix employees are sometimes in</p> <p>2 leadership positions within FMI; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware of whether Publix</p> <p>5 employees were involved in discussions with other</p> <p>6 FMI members in the 2001 to 2003 time frame,</p> <p>7 related to animal welfare issues?</p> <p>8 A. No.</p> <p>9 Q. So you're not aware of whether Publix</p> <p>10 employees were involved in FMIs decision to</p> <p>11 endorse the UEP Animal Welfare Guidelines?</p> <p>12 A. I'm not aware, no, sir.</p> <p>13 MR. SCHWINGLER: Okay. I don't have any</p> <p>14 other questions.</p> <p>15 MR. GERMAINE: Merrick, do you want to</p> <p>16 go ahead?</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. RAYLE:</p> <p>19 Q. Good afternoon, Mr. Wilson. My name is</p> <p>20 Merrick Rayle and I'm one of the lawyers that</p> <p>21 represents the indirect plaintiffs in this case.</p> <p>22 Please refer to Exhibit 18. And I'm</p>
<p style="text-align: right;">251</p> <p>1 suppliers for Publix between 1999 and 2002?</p> <p>2 A. Yes.</p> <p>3 Q. Are there any other shell egg suppliers</p> <p>4 that were considered to be a major supplier of</p> <p>5 Publix between 1999 and 2002?</p> <p>6 A. No.</p> <p>7 Q. With respect to -- first of all, did</p> <p>8 Publix sell a private label liquid egg substitute</p> <p>9 between 1999 and 2002?</p> <p>10 A. Yes, sir. I -- let me -- I believe we</p> <p>11 did.</p> <p>12 Q. Okay. So at some point, between 1999</p> <p>13 and 2002, Publix sold a private label egg</p> <p>14 substitute?</p> <p>15 A. Yes. I mean, like I said, I believe we</p> <p>16 did. It may have been before '99 when we started</p> <p>17 selling it.</p> <p>18 Q. Do you recall who the supplier of the</p> <p>19 private label liquid egg product was between 1999</p> <p>20 and 2002?</p> <p>21 A. No, sir. I don't recall.</p> <p>22 Q. Earlier, you testified that Publix</p>	<p style="text-align: right;">253</p> <p>1 focused on the sentence below the graph: "Prices</p> <p>2 increased two cents per dozen 2-24-03 for animal</p> <p>3 welfare issues." That was a price charged to</p> <p>4 Publix, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Was any -- any part of that increase</p> <p>7 passed on to the retail customer?</p> <p>8 A. Um, there's many factors involved.</p> <p>9 There's no way of, there's no way of knowing</p> <p>10 whether it is or not.</p> <p>11 Q. I believe you testified in response to</p> <p>12 my colleague's questions, that there were</p> <p>13 situations in which Publix did pass on increased</p> <p>14 cost to retail customers. Did I hear that</p> <p>15 correctly?</p> <p>16 A. Yes, sir.</p> <p>17 Q. I think you also said, although I might</p> <p>18 have written this wrong, that there were -- there</p> <p>19 could be instances in which such increases were</p> <p>20 not passed on; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And can you tell us what those instances</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

65 (Pages 254 to 257)

<p style="text-align: right;">254</p> <p>1 would include? Give us one or two?</p> <p>2 A. Um, just like I told him, they're</p> <p>3 multiple. It could be market conditions. It</p> <p>4 could be competition. It could be, um, any number</p> <p>5 of reasons.</p> <p>6 Q. Okay. Pull Exhibit 14, please.</p> <p>7 A. Yes, sir.</p> <p>8 Q. What I'm focused on is at page 652.</p> <p>9 It's the e-mail from Mr. Hicks to Ms. Richardson.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And under category overview, first</p> <p>12 sentence: "Egg substitutes are not a real 'price</p> <p>13 sensitive' item in that they're generally on the</p> <p>14 consumer's grocery list as a must rather than</p> <p>15 impulse buy." Do you see that, sir?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Can the same -- can the same be said for</p> <p>18 shell eggs --</p> <p>19 A. Um --</p> <p>20 Q. -- based on your experience?</p> <p>21 A. Eggs, eggs are -- shell eggs, I would</p> <p>22 say, are more price sensitive than liquid eggs.</p>	<p style="text-align: right;">256</p> <p>1 Mr. Lucas to you dated June 25, 2007, and attached</p> <p>2 is part of a spreadsheet reading "New Retail".</p> <p>3 Can you explain what this document is?</p> <p>4 A. The front page or the back page?</p> <p>5 Q. Both.</p> <p>6 A. The front page is e-mail from James</p> <p>7 Lucas, just like I said, with an attachment. The</p> <p>8 attachment is the Excel spreadsheet on the back,</p> <p>9 which figures out your egg retails for you. I</p> <p>10 mean, it's just a -- it's a simple Excel</p> <p>11 spreadsheet. As you plug a price in on Publix</p> <p>12 large eggs, it populates the rest of the fields.</p> <p>13 Q. Is this the kind of document that your</p> <p>14 company would prepare in the ordinary course of</p> <p>15 its business?</p> <p>16 A. Um, I'm sorry. I'm trying to understand</p> <p>17 your question.</p> <p>18 Q. Is this a document that was prepared</p> <p>19 periodically?</p> <p>20 A. No, sir. I use this document every week</p> <p>21 as I made egg price changes.</p> <p>22 Q. Okay.</p>
<p style="text-align: right;">255</p> <p>1 Consumers notice the change more readily. That</p> <p>2 doesn't mean that -- they still, they still have</p> <p>3 to have it to produce products. But I -- we get</p> <p>4 more push back when egg prices rise -- shell egg</p> <p>5 prices rise. Does that make sense?</p> <p>6 Q. It does. I'm going to mark this.</p> <p>7 (Discussion off Record)</p> <p>8 BY MR. RAYLE:</p> <p>9 Q. This appears to be an e-mail from</p> <p>10 Mr. James Lucas to you dated June 25, 2007,</p> <p>11 e-mailing new egg retail calculator.</p> <p>12 (Wilson 25 Received and Marked)</p> <p>13 MR. GERMAINE: I think we have a</p> <p>14 different document in front of us.</p> <p>15 MR. RAYLE: That's interesting. You do.</p> <p>16 Oh, boy. Sorry. Well, let me just let me</p> <p>17 see what we --</p> <p>18 BY MR. RAYLE:</p> <p>19 Q. I'm sorry, you can put that aside. I</p> <p>20 don't have any questions about that. I messed up.</p> <p>21 Let's try this.</p> <p>22 All right. Now we have an e-mail from</p>	<p style="text-align: right;">257</p> <p>1 A. So it was -- when James sent it to me</p> <p>2 in -- this was right after I started in 2007. I</p> <p>3 started end of June, first of July. So Monday,</p> <p>4 June 25th was probably my initial start date.</p> <p>5 James Lucas sent this document to me and this is</p> <p>6 the document that I used until I sent it to my</p> <p>7 predecessor to use to help him price eggs.</p> <p>8 Q. Okay. So the business purpose of the</p> <p>9 document was to help form the price, the retail</p> <p>10 price of eggs, shell eggs?</p> <p>11 A. Yes, sir. Like I said, all it is a</p> <p>12 simple Excel spreadsheet. As you plug in the</p> <p>13 large egg price, it populates the other fields so</p> <p>14 that they are all priced the same per egg.</p> <p>15 Q. Thank you.</p> <p>16 MR. RAYLE: I think that's all I have</p> <p>17 for you. Thank you very much.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 MR. GERMAINE: Karri, do you have any</p> <p>20 questions?</p> <p>21 MS. ALLEN: I do not. Thank you.</p> <p>22 MR. GERMAINE: Is there anyone else on</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

66 (Pages 258 to 261)

<p style="text-align: right;">258</p> <p>1 the phone? Okay. I have -- do you have some</p> <p>2 redirect?</p> <p>3 MR. SCHWINGLER: I might have a question</p> <p>4 or two about this document.</p> <p>5 MR. GERMAINE: Okay. I have just one</p> <p>6 question.</p> <p>7 CROSS-EXAMINATION</p> <p>8 BY MR. GERMAINE:</p> <p>9 Q. Mr. Wilson, earlier today, you provided</p> <p>10 some testimony about whether or not Publix</p> <p>11 requested its vendors to comply with certain</p> <p>12 animal welfare guidelines. Do you remember that?</p> <p>13 A. Yes.</p> <p>14 Q. What's your understanding of why Publix</p> <p>15 requested vendors to comply with the FMI Animal</p> <p>16 Welfare Guidelines in 2002 or thereabout?</p> <p>17 A. The main reason was because all other</p> <p>18 supermarkets were complying. We didn't want to be</p> <p>19 the only one left out.</p> <p>20 Q. And how do you know that?</p> <p>21 A. It was the Food Market Institute that</p> <p>22 was implementing it, so all the food markets, or</p>	<p style="text-align: right;">260</p> <p>1 they can try to use against you.</p> <p>2 Q. Would you agree it was to Publix's</p> <p>3 competitive benefit that it was able to place the</p> <p>4 Animal Care Certified logo on shell egg cartons in</p> <p>5 its stores?</p> <p>6 MR. GERMAINE: Objection to form.</p> <p>7 A. Um, I believe it helped with animal</p> <p>8 rights groups.</p> <p>9 BY MR. SCHWINGLER:</p> <p>10 Q. So you believe that ACC logo or the UEP</p> <p>11 certified logo helped Publix deal with pressure</p> <p>12 from animal welfare groups?</p> <p>13 A. Yes. In a certain form, yes.</p> <p>14 Q. And it would've been bad for Publix if</p> <p>15 it was the only major retailer that was not</p> <p>16 requiring the ACC logo, correct?</p> <p>17 A. It could've been presented as bad.</p> <p>18 Q. Coming back to Exhibit 25.</p> <p>19 A. Yes, sir.</p> <p>20 Q. This spreadsheet that you discussed,</p> <p>21 this doesn't account for any loss leader</p> <p>22 promotions, does it?</p>
<p style="text-align: right;">259</p> <p>1 all the food marketers, supermarket chains were,</p> <p>2 were adopting those guidelines.</p> <p>3 Q. Okay. Thank you.</p> <p>4 MR. GERMAINE: Counsel?</p> <p>5 REDIRECT EXAMINATION</p> <p>6 BY MR. SCHWINGLER:</p> <p>7 Q. Mr. Wilson, you just testified, I</p> <p>8 believe, that Publix did not want to be the only</p> <p>9 company left out with respect to the FMI Animal</p> <p>10 Welfare Guidelines. When you say "you didn't want</p> <p>11 to be the only one left out", could you just</p> <p>12 explain what you mean by that?</p> <p>13 A. We would be the only supermarket that</p> <p>14 wasn't part of the -- that didn't -- our companies</p> <p>15 didn't conform to the guidelines.</p> <p>16 Q. Why would that be?</p> <p>17 A. Suppliers.</p> <p>18 Q. Why would that have been a bad thing for</p> <p>19 Publix?</p> <p>20 A. Press, bad press, like you presented on</p> <p>21 supermarket industries. The animal welfare</p> <p>22 groups, PETA, Animal Rights of America, anything</p>	<p style="text-align: right;">261</p> <p>1 A. No, sir.</p> <p>2 Q. And it also doesn't really tell us what</p> <p>3 prices Publix was charging to its retail</p> <p>4 customers, does it?</p> <p>5 A. This document doesn't, no, sir. This</p> <p>6 document's just generic. It's all it is.</p> <p>7 Q. It's just something was information for</p> <p>8 you to consider when you were determining what</p> <p>9 prices would be?</p> <p>10 A. Like I said, it's an Excel file. So as</p> <p>11 you plug in, see line 303494?</p> <p>12 Q. Yes.</p> <p>13 A. Publix large eggs. Size 12. Under</p> <p>14 1803, Tampa Farms.</p> <p>15 Q. Yes.</p> <p>16 A. If you plug in a number there, 59 cents</p> <p>17 or 29 cents or a 1.99, whatever number you plug</p> <p>18 in, it will populate the rest of those fields off</p> <p>19 of that number. See how it's 1.49 and medium eggs</p> <p>20 are 1.39 and large eggs are .745? And it's, it's</p> <p>21 just a tool to help you get your pricing correct</p> <p>22 when you enter it into the system.</p>

HIGHLY CONFIDENTIAL

Wilson, James

August 29, 2013

67 (Pages 262 to 265)

<p style="text-align: right;">262</p> <p>1 Q. So this, this document does not tell you</p> <p>2 what Publix customers were paying for shell eggs</p> <p>3 at that point in time?</p> <p>4 A. No, sir.</p> <p>5 MR. SCHWINGLER: Okay. I have no</p> <p>6 further questions.</p> <p>7 MR. GERMAINE: Merrick, anything else?</p> <p>8 MR. RAYLE: I'm good. Thank you.</p> <p>9 MR. GERMAINE: Okay.</p> <p>10 MR. RAYLE: Thank you very much, sir.</p> <p>11 MR. GERMAINE: Thanks, everyone, for a</p> <p>12 nice day.</p> <p>13 THE VIDEOGRAPHER: It's 4:09. We're</p> <p>14 going off the record.</p> <p>15 (Proceedings concluded at 4:09 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">264</p> <p>1 CERTIFICATE OF OATH</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF ORANGE:</p> <p>4</p> <p>5 I, RITA G. MEYER, RDR, CRR, CBC, CCP, the</p> <p>6 undersigned authority, certify that JAMES WILSON</p> <p>7 personally appeared before me and was duly sworn.</p> <p>8</p> <p>9 WITNESS my hand and official seal this 7th</p> <p>10 day of September, 2013.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 _____</p> <p>15 RITA G. MEYER, RDR, CRR, CBC, CCP</p> <p>16 My Commission # EE070477</p> <p>17 Expires May 12, 2015</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">263</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, _____, do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true, correct</p> <p>6 and complete transcription of the testimony given by</p> <p>7 me, and any corrections appear on the attached Errata</p> <p>8 Sheet signed by me.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 (DATE) (SIGNATURE)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">265</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF FLORIDA:</p> <p>3 COUNTY OF ORANGE:</p> <p>4</p> <p>5 I, RITA G. MEYER, RDR, CRR, CBC, CCP, do</p> <p>6 hereby certify that I was authorized to and did</p> <p>7 stenographically report the deposition of JAMES</p> <p>8 WILSON; that a review of the transcript was</p> <p>9 requested; and that the foregoing transcript is a</p> <p>10 true and correct record of my stenographic notes.</p> <p>11 I FURTHER CERTIFY that I am not a relative,</p> <p>12 employee, attorney or counsel of any of the</p> <p>13 parties, nor am I a relative or employee of any of</p> <p>14 the parties, attorneys or counsel connected with</p> <p>15 the action, nor am I financially interested in the</p> <p>16 outcome of the action.</p> <p>17</p> <p>18 DATED this 7th day of September, 2013.</p> <p>19</p> <p>20 _____</p> <p>21 RITA G. MEYER, RDR, CRR, CBC, CCP</p> <p>22</p>

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com